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# LAW

## CONTRACTS

A contract is an agreement between two or more parties which is intended to be legally binding. It is a promise or set of promises for which the law provides a remedy. The law of contract is a branch of law which deals with the legal consequences of such promises.

## OFFER AND ACCEPTANCE

An offer is a promise to do or refrain from doing some act in exchange for something of value. It must be communicated to the offeree, who must accept it. Acceptance is the assent of the offeree to the terms of the offer. It must be made in a timely manner and in accordance with the terms of the offer.

## CONSIDERATION

Consideration is the price paid for the promise. It is something of value that is exchanged between the parties. It can be a promise to do something, a promise to refrain from doing something, or a promise to give something. Consideration must be given by the promisee to the promisor. It is a necessary element of a contract.

## INTENT

Intent is the state of mind of the parties at the time the contract is made. It is the intention to enter into a legal relationship. It is a necessary element of a contract. The law presumes that the parties intend to be bound by their promises.

## DEFENSES

There are several defenses to a contract. These include: (1) duress, (2) undue influence, (3) fraud, (4) mistake, (5) illegality, and (6) public policy. Each defense has specific legal requirements that must be met for it to be successful.

## REMEDIES

The law provides several remedies for breach of contract. These include: (1) specific performance, (2) damages, and (3) rescission. Each remedy is available under certain circumstances and is subject to certain legal principles.

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THE LAW AND PRACTICE .  
OF THE  
SUPREME COURT  
OF  
JUDICATURE,  
COMPRISING THE  
SUPREME COURT OF JUDICATURE  
ACT, 1873,  
Supreme Court of Judicature (Commencement)  
Act, 1874,  
RULES OF COURT,

*Notes, Statutes Referred to,*

AND

A VERY COPIOUS INDEX.

BY

WYNNE E. BAXTER,

*Solicitor of the Supreme Court.*

LONDON :

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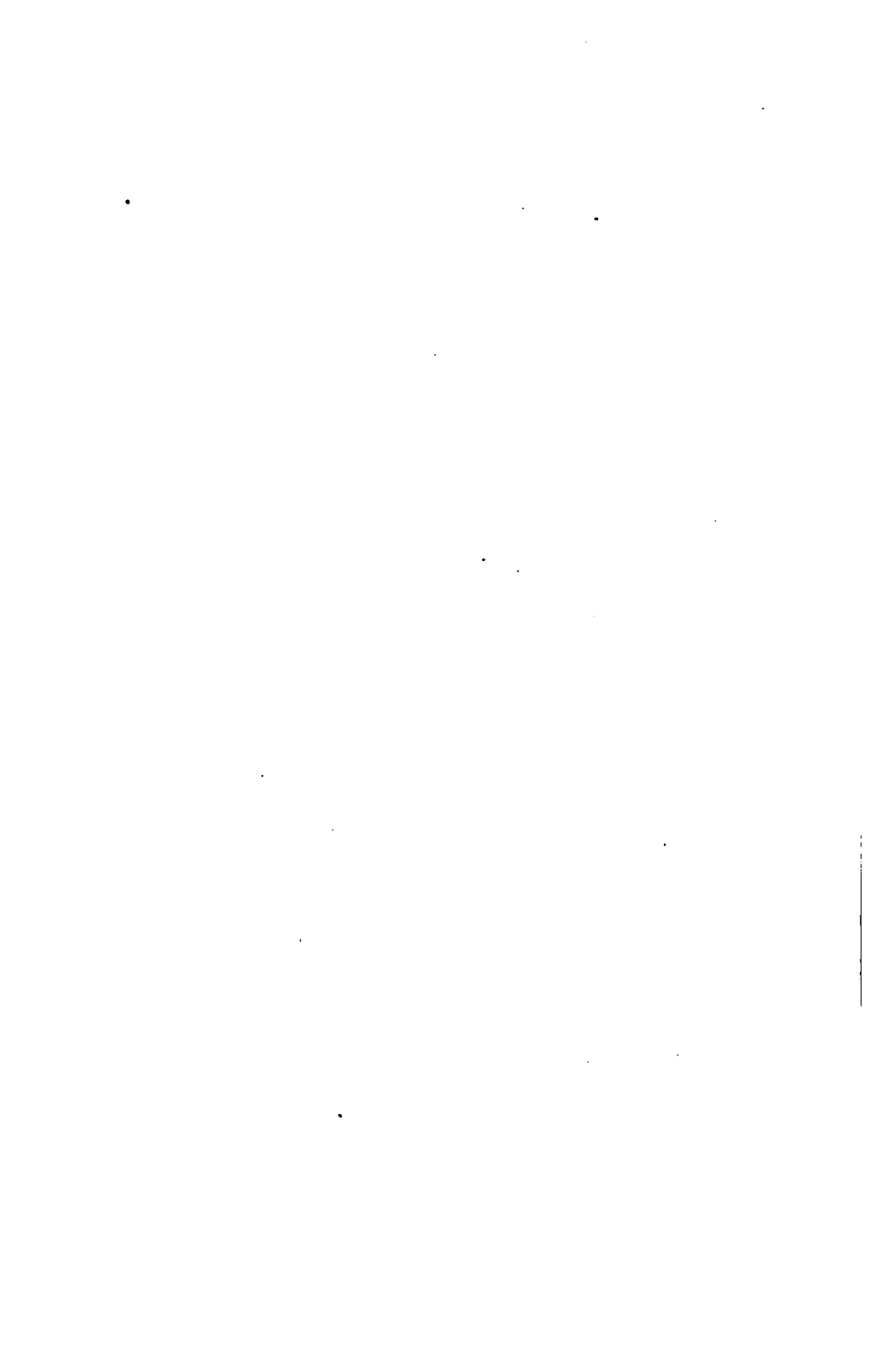
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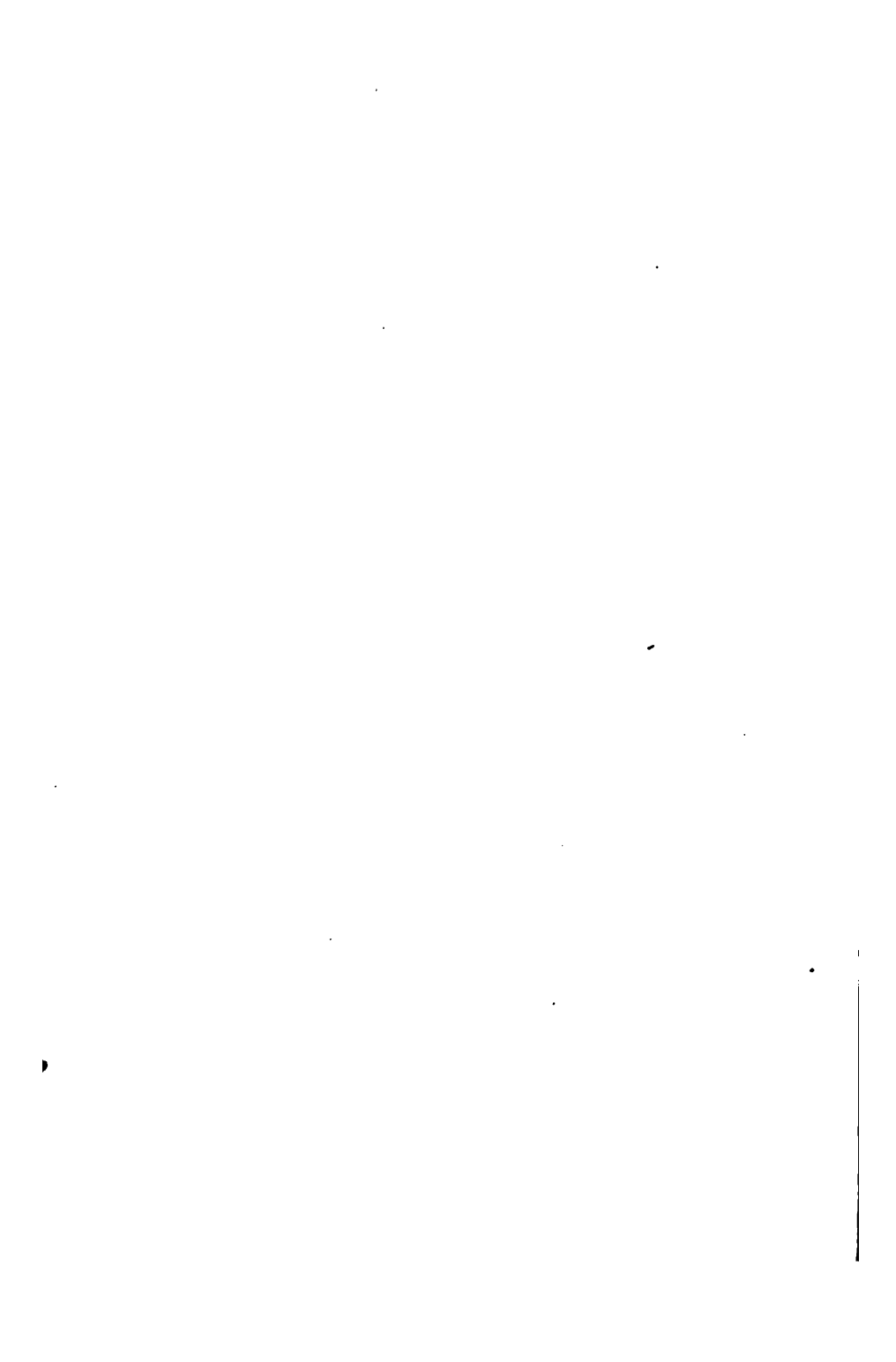
*This Volume is dedicated by its Author,*

IN REMEMBRANCE OF

The kind support of the profession and of  
his early friends, by which he was enabled  
to found the Society, and of the instruc-  
tion derived from its meetings during the  
lengthened period he was permitted to  
to act as its Secretary, and

IN THE HOPE

That this imperfect Edition of the  
most important statute passed this century  
in relation to the administration of justice  
may assist the Articled Clerk in his  
studies, as well as the Lawyer in his  
practice.



## P R E F A C E.

---

Although the operation of the Supreme Court of Judicature Act 1873 has been postponed to the 1st day of November, 1875, the Lord Chancellor in a speech in the House of Lords on the third reading of the Suspension Bill (6th August, 1874), stated "that it was the intention of the Government to pre-  
"sent the Judicature Bills at a very early period of next Session,  
"and that if Parliament would address itself to them with-  
"out delay there was no reason why the Act of last year  
"might not come into operation long before November—  
"may, be, by the 1st of May—and it would be entirely com-  
"petent to Parliament to alter the date in the Suspension  
"Bill, and decide on a much earlier one."

The interval in either case between the issue of the Rules of Court and the date when this most important Act generally comes into operation, allowing, therefore, no unnecessary time for its study, this volume has been prepared with a view of diminishing the confusion arising from an entire change of procedure in the Courts, by the publication, in a convenient form, of the Act and Rules, at the earliest possible moment.

The side notes to the Act are those in the Queen's Printer's Copy, but the author is responsible for those to the Rules of Court.

Any corrections of errors or suggestions for improvements in future editions will be gladly received.

The author is pleased to avail himself of this opportunity of acknowledging the assistance courteously accorded by

**G. B. Gregory, Esq., M.P.** (vice-president of the Incorporated Law Society), by **William Grantham, Esq., M.P.** (of the Home Circuit), and by **Geo. T. Jenkins, Esq.** (conveyancing Counsel to Queen Anne's Bounty).

It is hoped that the elaborate and exhaustive character of the Index, almost amounting to a digest, will more than compensate for any disadvantage which may be felt in the arrangement of the work.

**18, Laurence Pountney Hill,  
Cannon Street, E.C.,  
22nd August, 1874.**

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# JUDICATURE ACT.

*36 and 37 Vict., chap. 66.*

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An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.  
[5th August, 1873.]

WHEREAS it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England :

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of Her Majesty's Privy Council :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

## *Preliminary.*

§ 1, 2

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873." Short title.

2. This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the second day of November, 1874. Commencement of Act.

## PART I.

§ 3, 4, 5

*Constitution and Judges of Supreme Court.*

Union of  
existing  
Courts into  
one Supreme  
Court.

3. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

Division of  
Supreme  
Court into a  
Court of  
original and  
a Court  
of appellate  
jurisdiction.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

Constitution  
of High  
Court of  
Justice.

5. Her Majesty's High Court of Justice shall be constituted as follows :—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.

Subject to the provisions herein-after contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice," and shall be appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

6. Her Majesty's Court of Appeal shall be constituted as follows:—There shall be five ex officio Judges thereof, and also so many ordinary Judges

15, 6

Constitution  
of Court of  
Appeal.

16

not exceeding five at any one time as Her Majesty shall from time to time appoint. The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lords Justices of Appeal in Chancery, the existing salaried Judges of the Judicial Committee of Her Majesty's Privy Council, appointed under the "Judicial Committee Act, 1871," and such three other persons as Her Majesty may be pleased to appoint by Letters Patent: such appointment may be made either within one month before or at any time after the day appointed for the commencement of this Act, but if made before shall take effect at the commencement of this Act.

Besides the said ex-officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit), from time to time to appoint, under Her Royal Sign Manual, as additional Judges of the Court of Appeal, any persons who, having held in England the office of a Judge of the Superior Courts of Westminster hereby united and consolidated, or of Her Majesty's Supreme Court hereby constituted, or in Scotland the office of Lord Justice General or Lord Justice Clerk, or in Ireland the office of Lord Chancellor or Lord Justice of Appeal, or in India the office of Chief Justice of the High Court of Judicature at Fort William in Bengal, or Madras, or Bombay, shall respectively signify in writing their willingness to serve as such additional Judges in the Court of Appeal. No such additional Judge shall be deemed to have undertaken the duty of sitting in the Court of Appeal when prevented from so doing by attendance in the House of Lords, or on the discharge of any other public duty, or by any other reasonable impediment.

The ordinary and additional Judges of the Court of Appeal shall be styled Lord Justices of Appeal.

All the Judges of the said Court shall have, in all respects, save as in this Act is otherwise expressly mentioned, equal power, authority, and jurisdiction. § 6, 7, 8, 9

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent.

The Lord Chancellor for the time being shall be President of the Court of Appeal.

7. The office of any Judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed a Judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts. Vacancies by resignation of Judges and effect of vacancies generally.

8. Any barrister of not less than ten years standing shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary Judge of the said Court of Appeal: Provided, that no person appointed a Judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of Serjeant-at-Law. Qualifications of Judges. Not required to be Serjeants-at-Law.

9. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, shall hold their offices for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.

**§ 9, 10, 11** Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

**Precedence  
of Judges.**

10. The ex officio Judges of the Court of Appeal shall rank in the Supreme Court in the order of their present respective official precedence. The other Judges (whether ordinary or additional) of the Court of Appeal shall rank in the Supreme Court, if Peers or Privy Councillors, in the order of their respective precedence; and the rest of the Judges of the Court of Appeal shall rank according to the priority of their respective appointments to be Judges thereof.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the Judges of the Court of Appeal, and among themselves (subject to the provisions hereinafter contained as to existing Judges) according to the priority of their respective appointments.

**Saving of  
rights and  
obligations  
of existing  
Judges.**

11. Every existing Judge, who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, unless he was so liable

by usage or custom at the commencement of this § 11, 12, 13  
Act.

Service as a Judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, save as herein-after mentioned, every Judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Provisions  
for extra-  
ordinary  
duties of  
Judges of  
the former  
Courts.

13. Subject to the provisions in this Act contained with respect to existing Judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the Judge may be entitled;

Salaries of  
future  
Judges.

To the Lord Chancellor, the sums hitherto payable to him;

§ 13, 14, 15

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same annual sums which the holders of those offices now respectively receive ;

To each of the ordinary Judges of the Court of Appeal ; and

To each of the other Judges of the High Court of Justice, the sum of five thousand pounds a year.

No salary shall be payable to any additional Judge of the Court of Appeal appointed under this Act ; but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

Retiring  
pensions of  
future  
Judges of  
High Court  
of Justice,  
and ordi-  
nary Judges  
of Court of  
Appeal.

14. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice, or to any ordinary Judge of the Court of Appeal who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life :

In the case of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office :

In the case of any ordinary Judge of the Court of Appeal or any other Judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a Puisne Justice of the Court of Queen's Bench.

Salaries and  
pensions  
how to be  
paid.

15. Subject to the provisions in this Act contained with respect to existing Judges, the salaries, allowances, and pensions payable to the Judges of



the High Court of Justice, and the ordinary Judges of the Court of Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.

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## PART II.

*Jurisdiction and Law.*

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

Jurisdiction  
of High  
Court of  
Justice.

- (1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;
- (2.) The Court of Queen's Bench;
- (3.) The Court of Common Pleas at Westminster;
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
- (5.) The High Court of Admiralty;
- (6.) The Court of Probate;
- (7.) The Court for Divorce and Matrimonial Causes;

§ 18, 17

- (8.) The London Court of Bankruptcy ;
- (9.) The Court of Common Pleas at Lancaster ;
- (10.) The Court of Pleas at Durham ;
- (11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions :

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court, or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute ; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

**Jurisdiction not transferred to High Court.** 17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,—

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy :
- (2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster :
- (3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind :
- (4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom :

- (5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation : § 17, 18
- (6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following ; (that is to say,) Jurisdiction transferred to Court of Appeal.

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy :
- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of rehearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster :
- (3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of Judge :
- (4.) All jurisdiction and powers of the Court of Exchequer Chamber :
- (5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy

## PART I.

## § 3, 4, 5

*Constitution and Judges of Supreme Court.*

Union of  
existing  
Courts into  
one Supreme  
Court.

3. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

Division of  
Supreme  
Court into a  
Court of  
original and  
a Court  
of appellate  
jurisdiction.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

Constitution  
of High  
Court of  
Justice.

5. Her Majesty's High Court of Justice shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.

Subject to the provisions herein-after contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice," and shall be appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

6. Her Majesty's Court of Appeal shall be constituted as follows:—There shall be five ex officio Judges thereof, and also so many ordinary Judges

§ 5, 6

Constitution  
of Court of  
Appeal.

(not exceeding nine at any one time) as Her Majesty shall from time to time appoint. The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lords Justices of Appeal in Chancery, the existing salaried Judges of the Judicial Committee of Her Majesty's Privy Council, appointed under the "Judicial Committee Act, 1871," and such three other persons as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either within one month before or at any time after the day appointed for the commencement of this Act, but if made before shall take effect at the commencement of this Act.

Besides the said ex officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit), from time to time to appoint, under Her Royal Sign Manual, as additional Judges of the Court of Appeal, any persons who, having held in England the office of a Judge of the Superior Courts of Westminster hereby united and consolidated, or of Her Majesty's Supreme Court hereby constituted, or in Scotland the office of Lord Justice General or Lord Justice Clerk, or in Ireland the office of Lord Chancellor or Lord Justice of Appeal, or in India the office of Chief Justice of the High Court of Judicature at Fort William in Bengal, or Madras, or Bombay, shall respectively signify in writing their willingness to serve as such additional Judges in the Court of Appeal. No such additional Judge shall be deemed to have undertaken the duty of sitting in the Court of Appeal when prevented from so doing by attendance in the House of Lords, or on the discharge of any other public duty, or by any other reasonable impediment.

The ordinary and additional Judges of the Court of Appeal shall be styled Lord Justices of Appeal.

All the Judges of the said Court shall have, in all respects, save as in this Act is otherwise expressly mentioned, equal power, authority, and jurisdiction. § 6, 7, 8, 9

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent.

The Lord Chancellor for the time being shall be President of the Court of Appeal.

7. The office of any Judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed a Judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts. Vacancies by resignation of Judges and effect of vacancies generally.

8. Any barrister of not less than ten years standing shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary Judge of the said Court of Appeal: Provided, that no person appointed a Judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of Serjeant-at-Law. Qualifications of Judges. Not required to be Serjeants-at-Law.

9. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, shall hold their offices for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.

**§ 9, 10, 11** Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

**Precedence  
of Judges.**

10. The ex officio Judges of the Court of Appeal shall rank in the Supreme Court in the order of their present respective official precedence. The other Judges (whether ordinary or additional) of the Court of Appeal shall rank in the Supreme Court, if Peers or Privy Councillors, in the order of their respective precedence; and the rest of the Judges of the Court of Appeal shall rank according to the priority of their respective appointments to be Judges thereof.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the Judges of the Court of Appeal, and among themselves (subject to the provisions herein-after contained as to existing Judges) according to the priority of their respective appointments.

**Saving of  
rights and  
obligations  
of existing  
Judges.**

11. Every existing Judge, who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, unless he was so liable



by usage or custom at the commencement of this § 11, 12, 13  
Act.

Service as a Judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, save as herein-after mentioned, every Judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Provisions  
for extra-  
ordinary  
duties of  
Judges of  
the former  
Courts.

13. Subject to the provisions in this Act contained with respect to existing Judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the Judge may be entitled;

Salaries of  
future  
Judges.

To the Lord Chancellor, the sums hitherto payable to him;

§ 13, 14, 15

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same annual sums which the holders of those offices now respectively receive ;  
To each of the ordinary Judges of the Court of Appeal ; and

To each of the other Judges of the High Court of Justice, the sum of five thousand pounds a year.

No salary shall be payable to any additional Judge of the Court of Appeal appointed under this Act ; but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

Retiring  
pensions of  
future  
Judges of  
High Court  
of Justice,  
and ordi-  
nary Judges  
of Court of  
Appeal.

14. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice, or to any ordinary Judge of the Court of Appeal who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life :

In the case of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office :

In the case of any ordinary Judge of the Court of Appeal or any other Judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a Puisne Justice of the Court of Queen's Bench.

Salaries and  
pensions  
how to be  
paid.

15. Subject to the provisions in this Act contained with respect to existing Judges, the salaries, allowances, and pensions payable to the Judges of

the High Court of Justice, and the ordinary Judges of the Court of Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine. § 15, 16

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## PART II.

*Jurisdiction and Law.*

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,) Jurisdiction  
of High  
Court of  
Justice.

- (1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;
- (2.) The Court of Queen's Bench;
- (3.) The Court of Common Pleas at Westminster;
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
- (5.) The High Court of Admiralty;
- (6.) The Court of Probate;
- (7.) The Court for Divorce and Matrimonial Causes;

§ 18, 17

- (8.) The London Court of Bankruptcy ;
- (9.) The Court of Common Pleas at Lancaster ;
- (10.) The Court of Pleas at Durham ;
- (11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions :

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court, or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute ; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Jurisdiction  
not trans-  
ferred to  
High Court.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,—

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy :
- (2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster :
- (3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind :
- (4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom :

(5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation : § 17, 18

(6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following ; (that is to say,) Jurisdiction transferred to Court of Appeal.

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy :
- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of rehearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster :
- (3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of Judge :
- (4.) All jurisdiction and powers of the Court of Exchequer Chamber :
- (5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy

§ 19, 20, 21

Appeals  
from High  
Court.

made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine Appeals from any judgment or order, save as herein-after mentioned, of Her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such Appeals shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the nearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

No appeal  
from High  
Court or  
Court of  
Appeal to  
House of  
Lords, or  
Judicial  
Committee.

20. No error or appeal shall be brought from any judgment or order of the High Court of Justice, or of the Court of Appeal, nor from any judgment or order, subsequent to the commencement of this Act, of the Court of Chancery of the county palatine of Lancaster, to the House of Lords or to the Judicial Committee of Her Majesty's Privy Council; but nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords or to Her Majesty in Council, or to the Judicial Committee of the Privy Council, from any prior judgment or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.

Power to  
transfer  
jurisdiction  
of Judicial  
Committee  
by Order in  
Council.

21. It shall be lawful for Her Majesty, if she shall think fit, at any time hereafter by Order in Council to direct that all Appeals and Petitions whatsoever to Her Majesty in Council which according to the laws now in force ought to be

heard by or before the Judicial Committee of Her Majesty's Privy Council, shall, from and after a time to be fixed by such Order, be referred for hearing to and be heard by Her Majesty's Court of Appeal; and from and after the time fixed by such Order, all such Appeals and Petitions shall be referred for hearing to and be heard by the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such Appeals or Petitions, and the reports to be made to Her Majesty thereon, and all Orders thereon to be afterwards made by Her Majesty in Council, and also for all purposes of and incidental to the enforcement of any such Orders as may be made by the said Court of Appeal or by Her Majesty, pursuant to this section (but not for any other purpose), all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal.

§ 21

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The Court of Appeal, when hearing any appeals in Ecclesiastical Causes which may be referred to it in manner aforesaid, shall be constituted of such and so many of the Judges thereof, and shall be assisted by such assessors being Archbishops or Bishops of the Church of England, as Her Majesty, by any General Rules made with the advice of the Judges of the said Court, or any five of them (of whom the Lord Chancellor shall be one), and of the Archbishops and Bishops who are members of Her Majesty's Privy Council, or any two of them (and which General Rules shall be made by Order in Council), may think fit to direct: Provided that such rules shall be laid before each House of Parliament within forty days of the making of the same, if Parliament be then sitting, or if not, then within forty days of the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the

§ 21, 22

said House shall have sat, praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same ; and the rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Transfer of  
pending  
business.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act ; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act : Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed ; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act ; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been



a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether Civil or Criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued and concluded, as follows (that is to say), in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, in and before Her Majesty's Court of Appeal; and, as to all other proceedings, in and before Her Majesty's High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said Courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which

§ 22, 23

Rules as to  
exercise of  
jurisdiction.

**§ 23, 24** such jurisdiction shall have been transferred or by any of such Courts.

Law and equity to be concurrently administered.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following :

- (1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.
- (2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the

- like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.
- (3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.
- (4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights and all equitable duties and liabilities appearing incidentally in the course

of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

- (5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction ; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto : Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit ; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any Judgment, Decree, Rule, or Order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice ; and the Court shall thereupon make such Order as shall be just.
- (6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the

other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice. § 24, 25

- (7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter ; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the Law to be hereafter administered in England as to the matters next hereinafter mentioned : Be it enacted as follows :

- (1.) In the administration by the Court of the assets of any person who may die after the passing of this Act, and whose estate

Rules of law upon certain points.

Administration of assets of insolvent estates.

may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future or contingent liabilities, respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person may come in under the decree or order for the administration of such estate and make such claims against the same as they may respectively be entitled to by virtue of this Act.

Statutes of  
Limitation  
inapplicable  
to express  
trusts.

- (2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Equitable  
waste.

- (3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

- (4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for  
possession of  
land by  
mortgagors.

- (5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to

enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

- (6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and
- Assignment  
of debts and  
choses in  
action.

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**§ 25**

Stipulations  
not of the  
essence of  
contracts.

- in conformity with the provisions of the Acts for the relief of trustees.
- (7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity.

Injunctions  
and re-  
ceivers.

- (8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made ; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just ; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title ; and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages by  
collisions at  
sea.

- (9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Infants.

- (10.) In questions relating to the custody and



PART III. SITTINGS & DISTRIBUTION OF BUSINESS. 23

education of infants the Rules of Equity <sup>§25,26,27</sup>  
shall prevail.

- (II.) Generally in all matters not herein-before particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.
- Cases of conflict not enumerated.

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PART III.

*Sittings and Distribution of Business.*

26. The Division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

Abolition of terms.

27. Her Majesty in Council may from time to time, upon any report or recommendation of the Vacations.

**127, 28, 29** Judges by whose advice Her Majesty is hereinafter authorised to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, with the consent of the Lord Chancellor, make, revoke, or modify, orders regulating the vacations to be observed by the High Court of Justice and the High Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act.

Sittings in  
vacation.

28. Provision shall be made by Rules of Court for the hearing, in London or Middlesex, during vacation by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jurisdiction  
of Judges of  
High Court  
on circuit.

29. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted

in the body of this Act ; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice ; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Middlesex or London as herein-after in this Act mentioned, and such question or issue shall be tried and determined accordingly. § 29, 30, 31

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

30. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the said High Court of Justice. Sittings for trial by jury in London and Middlesex.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own,) there shall be in the said High Court five Divisions consisting of such number of Judges respectively as herein-after Divisions of the High Court of Justice.

§ 31

mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

(1.) One Division shall consist of the following Judges; (that is to say,) The Lord Chancellor, who shall be President thereof, the Master of the Rolls, and the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary Judges of the Court of Appeal:

(2.) One other Division shall consist of the following Judges; (that is to say,) The Lord Chief Justice of England, who shall be President thereof, and such of the other Judges of the Court of Queen's Bench as shall not be appointed ordinary Judges of the Court of Appeal:

(3.) One other Division shall consist of the following Judges; (that is to say,) The Lord Chief Justice of the Common Pleas, who shall be President thereof, and such of the other Judges of the Court of Common Pleas as shall not be appointed ordinary Judges of the Court of Appeal:

(4.) One other Division shall consist of the following Judges; (that is to say,) The Lord Chief Baron of the Exchequer, who shall be President thereof, and such of the other Barons of the Court of Exchequer as shall not be appointed ordinary Judges of the Court of Appeal:

(5.) One other Division shall consist of two Judges who, immediately on the commencement of this Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge to the Court of Appeal. The existing Judge of the Court of Probate

shall (unless so appointed) be the President of the said Division, and subject thereto the Senior Judge of the said Division, according to the order of Precedence under this Act, shall be President. § 31, 32

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division.

Any deficiency of the number of five Judges for constituting, in manner aforesaid, immediately on the commencement of this Act, any one or more of the Queen's Bench, Common Pleas, and Exchequer Divisions, may be supplied by the appointment, under Her Majesty's Royal Sign Manual, either before or after the time fixed for the commencement of this Act, of one of the Puisne Justices or Junior Barons of any superior Court of Common Law from which no Judge may be so appointed as aforesaid to the Court of Appeal, to be a Judge of any Division in which such deficiency would otherwise exist. And any deficiency of the number of three Vice-Chancellors or of the two Judges of the Probate and Admiralty Divisions at the time of the commencement of this Act may be supplied by the appointment of a new Judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Any Judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the same Division to which the Judge whose place has become vacant belonged.

32. Her Majesty in Council may from time to time, upon any report or recommendation of the

Power to  
alter Divi-  
sions by

§ 32, 33

Order in  
Council.

Council of Judges of the Supreme Court hereinafter mentioned, order that any reduction or increase in the number of Divisions of the High Court of Justice, or in the number of the Judges of the said High Court who may be attached to any such Division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such Order may provide for the abolition on vacancy of the distinction of the offices of any of the following Judges, namely, the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, which may be reduced, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other Judges of the High Court of Justice, notwithstanding anything in this Act relating to the continuance of such offices, salaries, pensions, and patronage; but no such Order of Her Majesty in Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that House shall have sat, nor if, within such period of thirty days, an address is presented to Her Majesty by either House of Parliament, praying that the same may not come into operation. Any such Order, in respect whereof no such address shall have been presented to Her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted: Provided always, that the total number of the Judges of the Supreme Court shall not be reduced or increased by any such Order.

Rules of  
Court to  
provide for  
distribution  
of business.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court,

or Orders of Transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner herein-after provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the Division, or with the name of the Judge, to which or to whom the same is assigned. § 33, 34

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court :

Assignment of certain business to particular Divisions of High Court, subject to Rules.

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act :

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any Judges or Judge thereof respectively, except Appeals from County Courts :

(3.) All causes and matters for any of the following purposes :

The administration of the estates of deceased persons ;

The dissolution of partnerships or the taking of partnership or other accounts ;

The redemption or foreclosure of mortgages ;

The raising of portions, or other charges on land ;

The sale and distribution of the proceeds of property subject to any lien or charge ;

The execution of trusts, charitable or private ;

The rectification, or setting aside, or cancellation of deeds, or other written instruments :

The specific performance of contracts

between vendors and purchasers of real estates, including contracts for leases ;

The partition or sale of real estates ;

The wardship of infants and the care of infants estates.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court :

- (1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act :
- (2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court :

- (1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act :
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court :

- (1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act :
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed :
- (3.) All matters pending in the London Court of Bankruptcy at the commencement of this Act :



- (4.) All matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction in respect to such matters has been given to the London Court of Bankruptcy. § 34, 35

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court :

- (1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act :
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

35. Subject to any Rules of Court, and to the provisions herein-before contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the Divisions of the said High Court, not being the Probate, Divorce, and Admiralty Division thereof, as he may think fit, by marking the document by which the same is commenced, with the name of such Division, and giving notice thereof to the proper officer of the Court ; provided that all interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached ; provided also, that if any plaintiff or petitioner shall at any time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or

Option for any Plaintiff (subject to Rules) to choose in what Division he will sue.

135, 36, 37

the provisions of this Act, the same ought not to be assigned, the Court, or any Judge of such Division, upon being informed thereof, may on a summary application, at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned.

Power of  
transfer.

36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

Sittings in  
London and  
Middlesex  
and on  
Circuits.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the Judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of Judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such Commission

any Ordinary Judge of the Court of Appeal or any Judge of the Chancery Division to be appointed after the commencement of this Act, or any Serjeant-at-Law, or any of Her Majesty's Counsel learned in the law, who, for the purposes of such Commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court. § 37, 38, 39

38. The Judges to be placed on the rota for the trial of election petitions for England in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the Judges of such Divisions respectively, as if such Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed. Rota of Judges for election petitions.

39. Any Judge of the said High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any Rules of Court to be hereafter made. In all such cases, Powers of one or more Judges not constituting a Divisional Court.

§ 39, 40, 41 any Judge sitting in Court shall be deemed to constitute a Court.

Divisional  
Courts of the  
High Court  
of Justice.

40. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the Judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such Judges. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

Divisional  
Courts for  
business of  
Queen's  
Bench,  
Common  
Pleas, and  
Exchequer  
Divisions.

41. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, according to the practice now existing in the Superior Courts of Common Law, would have been proper to be transacted or disposed of by the Court sitting in Banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts

as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorised by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court; and in case of difference among them, in such manner as a majority of the said Judges, with the concurrence of the Lord Chief Justice of England, shall determine.

42. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the Judges thereof, by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to the

§ 41, 42

Distribution of business among the Judges of the Chancery and Probate, Divorce, and Admiralty Divisions of the High Court.

§ 42, 43,  
44, 45

power to the transfer) may in his option think fit : Provided that (subject to any Rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by Commissioners, or in Middlesex or London,) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present Judge of the said Admiralty Court during his continuance in office as a Judge of the High Court.

Divisional  
Courts for  
business of  
the Chan-  
cery Divi-  
sion.

43. Divisional Courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the Judge, to whom such business is assigned, with the concurrence of the President of the same Division, deems proper to be heard by a Divisional Court.

Divisional  
Courts for  
business  
belonging to  
the Division.

44. Divisional Courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the Judges of such Division, with the concurrence of the President of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the President of such Division, with the concurrence of the President of the said High Court, by any other Judge of the said High Court.

Appeals  
from inferior  
Courts to be  
determined  
by Divisional  
Courts.

45. All Appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act have been brought to any Court or Judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the Judges thereof as may from time to time be assigned for that purpose, pursuant to Rules of Court, or (subject to Rules of Court) as may be so assigned according to arrangements made for the purpose by the Judges

of the said High Court. The determination of such Appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard.

§ 45, 46,  
47, 48

46. Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

Cases and points may be reserved for or directed to be argued before Divisional Courts.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least, shall be part. The determination of any such question by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

Provision for Crown cases reserved.

48. Every motion for a new trial of any cause or

Motions for

§ 48, 49,  
50, 51

new trials to  
be heard by  
Divisional  
Courts.

matter on which a verdict has been found by a jury, or by a Judge without a jury, and every motion in arrest of judgment, or to enter judgment non obstante veredicto, or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from any judgment founded upon and applying any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the Court of Appeal from the decision of the Divisional Court upon such motion or other proceeding.

What orders  
shall not be  
subject to  
Appeal.

49. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order.

As to dis-  
charging  
orders made  
in Chambers

50. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

Provision for  
absence or  
vacancy in  
the office of  
a Judge.

51. Upon the request of the Lord Chancellor, it shall be lawful for any Judge of the Court of Appeal, who may consent so to do, to sit and act as a Judge of the said High Court or to perform any other official or ministerial acts for or on behalf of any Judge absent from illness or any other cause, or in the place of any Judge whose office has become vacant, or as an additional Judge of any



Division; and while so sitting and acting any such Judge of the Court of Appeal shall have all the power and authority of a Judge of the said High Court.

§ 51, 52,  
53, 54,  
55

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof.

Power of a  
single Judge  
in Court of  
Appeal.

53. Every appeal to the Court of Appeal shall be heard or determined either by the whole Court or by a Divisional Court consisting of any number, not less than three, of the Judges thereof. Any number of such Divisional Courts may sit at the same time. Any appeal which for any reason may be deemed fit to be re-argued before decision or to be re-heard before final judgment may be so re-argued or re-heard before a greater number of Judges if the Court of Appeal think fit so to direct.

Divisional  
Courts of  
Court of  
Appeal.

54. No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself or made by any Divisional Court of the High Court of which he was himself a member.

Judges not  
to sit on  
appeal from  
their own  
judgments.

55. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal, and for constituting and holding Divisional Courts thereof, shall be made by and under the direction of the President and the other ex officio and ordinary Judges of the said Court of Appeal; and if Her Majesty shall be pleased by Order in Council to direct that the hearing of such appeals and petitions to Her Majesty in Council as herein-before mentioned shall be referred to the said Court of

Arrange-  
ments for  
business of  
Court of  
Appeal, and  
for hearing  
Appeals  
transferred  
from the  
Judicial  
Committee  
of the Privy  
Council.

§ 55. 56

Appeal, not less than one Divisional Court of the said Court of Appeal shall sit throughout the year (except during vacations) for the hearing of such of the appeals and petitions so referred as may from time to time be depending and ready for hearing, which Divisional Court shall be composed (as far as may be found practicable) of Judges of the Court of Appeal who are also members of Her Majesty's Privy Council; and any member of Her Majesty's Privy Council who, having held the office of a Judge in the East Indies or in any of Her Majesty's dominions beyond the seas, shall have been appointed by Her Majesty, under the Acts relating to the Judicial Committee of the Privy Council, to attend the sittings of the said Judicial Committee, may attend the sittings of any such Divisional Court of the Court of Appeal; and with respect to the place of sitting of any such last-mentioned Divisional Court, and any attendance or service therein, or in aid of the proceedings thereof, which may be required from the Registrar or any other officer of Her Majesty's Privy Council, all such arrangements as may be necessary or proper shall be made by the Lord Chancellor, as President of the Court of Appeal, with the concurrence of the President for the time being of Her Majesty's Privy Council; and the President of Her Majesty's Privy Council shall from time to time give such directions to the Registrar and other officers of the said Privy Council as may be necessary or proper for the purpose of carrying such last-mentioned arrangements into effect.

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#### PART IV.

##### *Trial and Procedure.*

References  
and assoc-  
ions.

56. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question

arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to any official or special Referee, and the report of any such Referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special Referees or assessors shall be determined by the Court.

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official Referee, to be appointed as herein-after provided, or before a special Referee to be agreed on between the parties; and any such special Referee so agreed on shall have the same powers and duties and proceed in the same manner as an official Referee. All such trials before Referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

§ 56, 57

Power to  
direct trials  
before  
Referees.

§ 58, 59, 60

Power of  
Referees and  
effect of  
their find-  
ings.

58. In all cases of any reference to or trial by Referees under this Act the Referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any Referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Powers of  
Court with  
respect to  
proceedings  
before  
Referees.

59. With respect to all such proceedings before Referees and their Reports, the Court or such Judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

Her Majesty  
may esta-  
blish District  
Registries in  
the country  
for the  
Supreme  
Court.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be District Registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are herein-after mentioned; and Her Majesty may thereby appoint that any Registrar of any County Court, or any Registrar or Prothonotary or District Prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a District Registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a District Registrar of the said High Court of Justice, or who shall hereafter

be appointed such District Registrar, shall and may be a District Registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are herein-after mentioned. This section shall come into operation immediately upon the passing of this Act.

§ 60, 61,  
62, 63, 64

61. In every such District Registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such District Registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such District Registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Seals of  
District  
Registries.

62. All such District Registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by Rules of Court, or by any special order of the Court.

Powers of  
District  
Registrars.

63. The Lord Chancellor, with the sanction of the Treasury, may, either before or after the commencement of this Act, fix, and may afterwards, with the like sanction, from time to time alter, a Table of Fees to be taken by such District Registrars in respect of all business to be done under this Act; and such fees shall be received and collected by stamps, denoting in each case the amount of the fee payable. The provisions of the "Courts of Justice (Salaries and Funds) Act, 1869," as to fees to be taken by stamps, shall apply to the fees to be received and collected by stamps under this Act.

Fees to be  
taken by  
District  
Registrars.\*

64. Subject to the Rules of Court in force for the time being, writs of summons for the com-

Proceedings  
to be taken  
in District  
Registries.

§ 64, 65

mencement of actions in the High Court of Justice shall be issued by the District Registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any Judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the District Registrar, and recorded in the District Registry, in such manner as may be prescribed by Rules of Court; and all such other proceedings in any such action as may be prescribed by Rules of Court shall be taken and if necessary may be recorded in the same District Registry.

Power for  
Court to  
remove pro-  
ceedings  
from District  
Registries.

65. Any party to an action in which a writ of summons shall have been issued from any such District Registry shall be at liberty at any time to apply, in such manner as shall be prescribed by Rules of Court, to the said High Court, or to a Judge in Chambers of the Division of the said High Court to which the action may be assigned, to remove the proceedings from such District Registry into the proper Office of the said High Court; and the Court or Judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the District Registrar to the proper Office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper Office in London; or the Court or Judge, if it be thought right, may there-

upon direct that the proceedings may continue to <sup>§ 65, 66, 67, 68</sup> be taken in such District Registry.

66. It shall be lawful for the Court, or any Judge of the Division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such District Registrar as aforesaid; and in any such case the District Registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any District Registrar, the report in writing of such District Registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

Accounts and inquiries may be referred to District Registrars.

67. The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Acts, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a County Court.

30 & 31 Vict. c. 142, ss. 5, 7, 8, and 10 to extend to actions in High Court.

68. Subject to the provisions of this Act, Her Majesty may, at any time before the commencement of this Act, by and with the advice of the Lord Chancellor, the Lord Chief Justice of England, and the other Judges of the several Courts intended to be united and consolidated by this Act, or of the greater number of them, (of whom the Lord Chancellor and the Lord Chief Justice of England shall be two,) cause to be prepared Rules, in this Act referred to as Rules of Court, providing as follows:

Rules of Court may be made by Order in Council before commencement of the Act.

- (1.) For the regulation of the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers;
- (2.) For the regulation of Circuits, including the

§ 68, 69

times and places at which they are to be holden and the business to be transacted thereat ;

- (3.) For the regulation of all matters consistent with or not expressly determined by the Rules contained in the Schedule hereto, which, under and for the purposes of such last-mentioned Rules, require to be, or conveniently may be defined or regulated by further Rules of Court ;
- (4.) And, generally, for the regulation of any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or to the costs of proceedings therein, or to the conduct of civil or criminal business coming within the cognizance of the said Courts respectively, for which provision is not expressly made by this Act or by the Rules contained in the Schedule hereto.

Rules to be laid before Parliament, and may be annulled on address from either House

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within forty days next after the same are made, if Parliament is then sitting, or if not, within forty days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said Houses, within the next subsequent forty days on which the said House shall have sat, praying that any such Rules may be annulled, Her Majesty may thereupon by Order in Council annul the same ; and the Rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. This section shall come into operation immediately on the passing of this Act.

Rules in Schedule to regulate procedure

69. The Rules contained in the Schedule to this Act (which shall be read and taken as part of this Act) shall come into operation immediately on the



commencement of this Act, and, as to all matters to which they extend, shall thenceforth regulate the proceedings in the High Court of Justice and the Court of Appeal respectively, unless and until, by the authority herein-after in that behalf provided, any of them may be altered or varied; but such Rules, and also all Rules to be made before the commencement of this Act, as herein-before mentioned, shall for all the purposes of this Act be Rules of Court capable of being annulled or altered by the same authority by which any other Rules of Court may be made, altered, or annulled after the commencement of this Act.

§ 69, 70,  
71, 72  
till changed  
by other  
rules after  
commence-  
ment of Act.

70. All Rules and Orders of Court which shall be in force in the Court of Probate, the Court for Divorce and Matrimonial Causes, the Admiralty Court, and the London Court of Bankruptcy respectively at time of the commencement of this Act, except so far as they are hereby expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been contained in the Schedule to this Act until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

Rules of  
Probate,  
Divorce,  
Admiralty,  
and Bank-  
ruptcy  
Courts to be  
Rules of the  
High Court.

71. Subject to any Rules of Court to be made under and by virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.

Criminal  
procedure,  
subject to  
future Rules  
to remain  
unaltered.

72. Nothing in this Act or in the Schedule hereto, or in any Rules of Court to be made by virtue hereof, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses

Act not to  
affect Rules  
of evidence  
or juries.

§ 72, 73,  
74

Saving of  
existing  
procedure of  
Courts when  
not incon-  
sistent with  
this Act or  
Rules.

Power to  
make and  
alter Rules  
after com-  
mencement  
of Act.

in trials by jury, or the Rules of Evidence, or the law relating to jurymen or juries.

73. Save as by this Act, or by any Rules of Court (whether contained in the Schedule to this Act, or to be made under the authority thereof), is or shall be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virtue of any law, custom, General Orders, or Rules whatsoever, and which are not inconsistent with this Act or with any Rules contained in the said Schedule or to be made by virtue of this Act, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.

74. From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter or annul any Rules of Court for the time being in force, or make any new Rules of Court, for the purpose of regulating all such matters of practice and procedure in the Supreme Court, or relating to the suitors or officers of the said Court, or otherwise, as under the provisions of this Act are or may be regulated by Rules of Court: Provided, that any Rule made in the exercise of this power, whether for altering or annulling any then existing Rule, or for any other purpose, shall be laid before both Houses of Parliament, within the same time, and in the same manner and with the same effect in all respects, as is herein-before provided with respect to the said Rules to be made before the commencement of this Act, and may be annulled

and made void in the same manner as such last-mentioned Rules. § 74, 75.  
76

75. A Council of the Judges of the Supreme Court, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the said Court of Appeal: And they shall report annually to one of Her Majesty's Principal Secretaries of State what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of Justice. Any Extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

Councils of Judges to consider procedure and administration of justice.

76. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

§ 76, 77. Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the said High Court of Justice; and all general and other Commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any Judges of any of the Courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

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## PART V.

### *Officers and Offices.*

Transfer of  
existing  
staff of  
officers to  
Supreme  
Court.

77. The Queen's Remembrancer, and all Masters, Secretaries, Registrars, Clerks of Records and Writs, Associates, Prothonotaries, Chief and other Clerks, Commissioners to take oaths or affidavits, Messengers, and other officers and assistants at the time of the commencement of this Act attached to any Court or Judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all Registrars, Clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or

writs, or in the registration of judgments or any other ministerial duties in aid of, or connected with, any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, shall, from and after the commencement of this Act, be attached to the Supreme Court, consisting of the said High Court of Justice and the said Court of Appeal: Provided, that all the duties with respect to Appeals from the Court of Chancery of the County Palatine of Lancaster which are now performed by the Clerk of the Council of the Duchy of Lancaster shall be performed by the Registrars, Taxing Masters, and other officers by whom like duties are discharged in the Supreme Court; and the said Clerk of the Council of the Duchy of Lancaster shall not be an officer attached to the said Court.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed, and any such officer who is removeable by the Court to which he is now attached shall be removeable by the Court to which he shall be attached under this Act, or by the majority of the Judges thereof.

The existing Registrars and Clerks to the Registrars in the Chancery Registrars' office shall retain any right of succession secured to them by Act of Parliament, so as to entitle them in that office, or in any substituted office, to the succession to appointments with similar or analogous duties and with equivalent salaries.

The business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any Divisional or other Court thereof, or in the Chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the Supreme Court by this section in such manner as may be directed by Rules of Court; and such officers shall perform

77. 78

such duties in relation to such business as may be directed by Rules of Court, with this qualification, that the duties required to be performed by any officer shall be the same, or duties analogous to those which he performed previously to the passing of this Act; and subject to such Rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, in the same manner as if this Act had not passed.

All Secretaries, Clerks, and other officers attached to any existing Judge who under the provisions of this Act shall become a Judge of the High Court of Justice, or of the Court of Appeal, shall continue attached to such Judge and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto; and all such last-mentioned officers shall have the same rank and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed: Provided that the Lord Chancellor may, with the consent of the Treasury, increase the salary of any existing officer whose duties are increased by reason of the passing of this Act.

Upon the occurrence of a vacancy in the office of any officer coming within the provisions of this section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge. Nothing in this Act contained shall interfere with the office of Marshal attending any Commissioner of Assize.

Officers of  
Courts of  
Pleas at  
Lancaster  
and Durham

78. The existing Queen's Counsel of the County Palatine of Lancaster shall for the future have the same precedence in the County, and the existing Prothonotaries and District Prothonotaries, and other officers of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham

respectively, and their successors, shall (subject to Rules of Court) perform the same or the like duties and exercise the same or the like powers and authorities in respect of all causes and matters depending in those Courts respectively at the commencement of this Act, and also in respect of all causes and matters which may afterwards be commenced in the High Court of Justice in the manner heretofore practised in the said Court of Common Pleas at Lancaster and the said Court of Pleas at Durham respectively, as at the commencement of this Act may lawfully be performed and exercised by them respectively under any Acts of Parliament for the time being in force with respect to the said last-mentioned Courts respectively, or under any other authority ; and all powers in respect of any such Prothonotaries, District Prothonotaries, or other officers of the Court of Common Pleas at Lancaster, which at the commencement of this Act may be vested by law in the Chancellor of the Duchy and County Palatine of Lancaster, under any such Act of Parliament or otherwise, and to which the concurrence of any other authority may not be required, shall and may be exercised after the commencement of this Act by the Lord Chancellor ; and all the powers of making or publishing any general rules or orders with respect to the powers or duties of such Prothonotaries, District Prothonotaries, or other officers of the said Court of Common Pleas at Lancaster or the said Court of Pleas at Durham, or with respect to the business of the said Court respectively, or with respect to any fees to be taken therein, or otherwise with reference thereto, which under any such Act as aforesaid or otherwise by law may be vested in the Chancellor of the Duchy and County Palatine of Lancaster, with the concurrence of any Judges or Judge, or in any other authority, shall be exercised after the commencement of this Act in the manner hereby provided with respect to Rules of Court to be made under this Act, and (in all cases in which

§ 78, 79

the sanction of the Treasury is now required) with the sanction of the Treasury; and all provisions made by any such Acts as aforesaid, or otherwise, for or with respect to the remuneration of any such Prothonotaries, District Prothonotaries, or other officers as aforesaid, shall remain and be in full force and effect until the same shall be altered under the provisions of this Act, or otherwise by lawful authority.

Personal  
officers of  
future  
Judges.

79. Each of the Judges of the High Court of Justice, and of the Ordinary Judges of the Court of Appeal, appointed respectively after the commencement of this Act, and also such of the Ordinary Judges of the Court of Appeal as have no similar officers at the time of the commencement of this Act, shall have such officers as herein-after mentioned, who shall be attached to his person as such Judge, and appointed and removable by him at his pleasure, and who shall respectively receive the salaries herein-after mentioned: (that is to say,)

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, respectively, there shall be attached a Secretary, whose salary shall be five hundred pounds per annum, a Principal Clerk, whose salary shall be four hundred pounds per annum, and a Junior Clerk, whose salary shall be two hundred pounds per annum. To each of the other Judges of the High Court of Justice, and to each of the Ordinary Judges of the Court of Appeal, there shall be attached a Principal Clerk, whose salary shall be four hundred pounds per annum, and, in the case of the Judges of the High Court of Justice, a Junior Clerk, whose salary shall be two hundred pounds per annum.

Such one or more of the officers so attached to each of the said Judges, as such Judge shall think fit, shall be required, while in attendance on such



Judge, to discharge, without further remuneration, the duties of Crier in Court or on Circuit, or of Usher or Train Bearer. The duties of Chamber Clerks, so far as relates to business transacted in chambers by Judges appointed after the commencement of this Act, shall be performed by officers of the Court in the permanent civil service of the Crown.

§ 79, 80,  
81, 82, 83

80. Any existing officer attached to any existing Court or Judge whose jurisdiction is abolished or transferred by this Act, who is paid out of fees, and whose emoluments are affected by the passing of this Act shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

Provisions  
as to officers  
paid out of  
fees.

81. Where a doubt exists as to the position under this Act of any existing officer attached to any existing Court or Judge affected by this Act, such doubt may be determined by Rules of Court; subject to this proviso, that such Rules of Court shall not alter the tenure of office, rank, pension (if any), or salary of such officer, or require him to perform any duties other than duties analogous to those which he has already performed.

Doubts as to  
the status of  
officers to be  
determined  
by Rule.

82. Every person who at the commencement of this Act shall be authorised to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a Commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

Powers of  
Commissioners  
to administer  
oaths.

83. There shall be attached to the Supreme Court permanent officers to be called Official Referees, for the trial of such questions as shall under the provisions of this Act be directed to be tried by such Referees. The number and the

Official  
Referees to  
be appointed

§ 83, 84

qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the Presidents of the divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the Treasury. Such Official Referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorised by any order of the said High Court, or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the Treasury out of moneys to be provided by Parliament.

Duties, appointment, and removal of officers of Supreme Court.

84. Subject to the provisions in this Act contained with respect to existing officers of the Courts whose jurisdiction is hereby transferred to the Supreme Court, there shall be attached to the Supreme Court such officers as the Lord Chancellor with the concurrence of the Presidents of the Divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice of England shall be one, and with the sanction of the Treasury, may from time to time determine.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties, with respect either to the Supreme Court generally, or with respect to the High Court of Justice or the Court of Appeal, or with respect to any one of the divisions of the said High Court, or with respect to any particular Judge or Judges of either of the said Courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective Courts, Divisions, and Judges accordingly.

All officers assigned to perform duties with respect to the Supreme Court generally, or attached to the High Court of Justice or the Court of Appeal, and all Commissioners to take oaths or affidavits in the

Supreme Court, shall be appointed by the Lord Chancellor. § 84, 85

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls, shall continue, while so attached, to be appointed by the Master of the Rolls.

All other officers attached to any Division of the said High Court shall be appointed by the President of that Division.

All officers attached to any Judge shall be appointed by the Judge to whom they are attached.

Any officer of the Supreme Court (other than such officers attached to the person of a Judge as are herein-before declared to be removeable by him at his pleasure,) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any Division of the High Court by the President of such Division, with respect to any duties to be discharged by them respectively.

85. There shall be paid to every official Referee and other salaried officer appointed in pursuance of this Act such salary out of moneys to be provided by Parliament as may be determined by the Treasury with the concurrence of the Lord Chancellor. Salaries and pensions of officers.

An officer attached to the person of a Judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be

§85, 86, 87

deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

Patronage  
not other-  
wise pro-  
vided for.

86. Subject to the provisions herein-before contained, any rights of patronage and other rights or powers incident to any Court, or to the office of any Judge of any Court whose jurisdiction is transferred to the said High Court of Justice, or to the said Court of Appeal, in respect of which rights of patronage or other rights or powers no provision is or shall be otherwise made by or under the authority of this Act, shall be exercised as follows, that is to say: if incident to the office of any existing Judge shall continue to be exercised by such existing Judge during his continuance in office as a Judge of the said High Court or of the Court of Appeal, and after the death, resignation, or removal from office of such existing Judge shall be exercised in such manner as Her Majesty may by Sign Manual direct.

Solicitors  
and attor-  
neys.

87. From and after the commencement of this Act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called Solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called Solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges

PART VI. JURISDICTION OF INFERIOR COURTS. 59

and be subject to the same obligations as if this <sup>187, 88, 89</sup> Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be Officers of the Supreme Court; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

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PART VI.

*Jurisdiction of Inferior Courts.*

88. It shall be lawful for Her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction, the same jurisdiction in Equity and in Admiralty, respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

Power by  
Order in  
Council to  
confer juris-  
diction on  
inferior  
Courts.

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next herein-after contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

Powers of  
inferior  
Courts  
having  
Equity and  
Admiralty  
jurisdiction.

180, 91, 92

Counter-claims in inferior Courts, and transfers therefrom.

90. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim : Provided always, that in such case it shall be lawful for the High Court, or any Division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any Division thereof ; and in such case the Record in such proceeding shall be transmitted by the Registrar, or other proper officer, of the inferior Court to the said High Court ; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

Rules of law to apply to inferior Courts.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

## PART VII.

### *Miscellaneous Provisions.*

Transfer of books and papers to Supreme Court.

92. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be

dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court. § 92, 93,  
94, 96, 98

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit. Saving as to  
circuits, &c.

94. This Act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court, and by his successors. Saving as to  
Lord Chan-  
cellor.

95. This Act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the County Palatine of Lancaster. Saving as to  
Chancellor  
of Lancaster.

96. The Chancellor of the Exchequer shall not be a Judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, Saving as to  
Chancellor  
of the Ex-  
chequer  
and sheriffs.

§ 96, 97,  
98, 99, 100

as if this Act had not passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer.

Saving as  
to Lord  
Treasurer  
and office of  
the Receipt  
of Exchequer

97. Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer.

Provisions as  
to Great Seal  
being in  
commission.

98. When the Great Seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor, by this Act may be exercised by the Senior Lord Commissioner for the time being.

Provision as  
to Commis-  
sions in  
Counties  
Palatine.

99. From and after the commencement of this Act, the Counties Palatine of Lancaster and Durham shall respectively cease to be Counties Palatine, so far as respects the issue of Commissions of Assize, or other like Commissions, but not further or otherwise; and all such Commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales.

Interpreta-  
tion of terms.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,)

“Lord Chancellor” shall include Lord Keeper of the Great Seal.

“The High Court of Chancery” shall include the Lord Chancellor.



- “The Court of Appeal in Chancery” shall include the Lord Chancellor as a Judge on Rehearing or Appeal. § 100
- “London Court of Bankruptcy” shall include the Chief Judge in Bankruptcy.
- “The Treasury” shall mean the Commissioners of Her Majesty’s Treasury for the time being, or any two of them.
- “Rules of Court” shall include forms.
- “Cause” shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.
- “Suit” shall include action.
- “Action” shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by the Crown.
- “Plaintiff” shall include every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- “Petitioner” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.
- “Defendant” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.
- “Party” shall include every person served with notice of, or attending any proceeding, although not named on the Record.
- “Matter” shall include every proceeding in the Court not in a cause.
- “Pleading” shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any

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§ 100

plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

“Judgment” shall include decree.

“Order” shall include rule.

“Oath” shall include solemn affirmation and statutory declaration.

“Crown cases reserved” shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty’s reign, chapter seventy-eight.

“Pension” shall include retirement and superannuation allowance.

“Existing” shall mean existing at the time appointed for the commencement of this Act.

## SCHEDULE.

### RULES OF PROCEDURE.

#### *Form of Action*

R.P. 1, 2

1. All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

Form of  
action in  
High Court.

All other proceedings in and applications to the High Court may, subject to Rules of Court, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if this Act had not passed.

#### *Writ of Summons.*

2. Every action in the High Court shall be commenced by a writ of summons, which shall be endorsed with a statement of the nature of the claim made, or of the relief or remedy required in

Actions to be  
commenced  
by writ.

**R. P. 2, 3, 4, 5, 6, 7** the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

**Form of writ.**

3. Forms of writs and of endorsements thereon, applicable to the several ordinary causes of action, shall be prescribed by Rules of Court, and any costs incurred by the use of any more prolix or other forms shall be borne by the party using the same, unless the Court shall otherwise direct.

**Acceptance of service.**

4. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

**Service of writ.**

5. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

**Service out of the jurisdiction.**

6. Whenever it appears fit to the Court or to a Judge in a case in which the cause of action has arisen within the jurisdiction, or is properly cognizable against a defendant within the jurisdiction, that any person out of the jurisdiction of the Court should be served with the writ or other process of the Court, the Court or Judge may order such service, or such notice in lieu of service, to be made or given in such manner and on such terms as may seem just.

**Special endorsement of particulars of debts or liquidated demands.**  
See C. L. P. Act, 1852, ss. 25, 27.

7. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money, payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether

under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially endorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

R P. 7, 8

In case of non-appearance by the defendant where the writ of summons is so specially endorsed, the plaintiff may sign final judgment for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment, upon such terms as may seem just.

Where the defendant appears on a writ of summons so specially endorsed, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so endorsed, together with interest, if any, and costs; and the Court or Judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or Judge that he has a good defence to the action on the merits, or disclose such facts as the Court or Judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly. Permission to defend the action may be granted to the defendant on such terms and conditions, if any, as the Judge or Court may think just.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be endorsed with a claim that such account be taken.

Special endorsement of particulars in cases of account.

In default of appearance on such summons, and after appearance unless the defendant, by affidavit

R.P. 2, 3, 4, 5, 6, 7 the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

Form of writ.

3. Forms of writs and of endorsements thereon, applicable to the several ordinary causes of action, shall be prescribed by Rules of Court, and any costs incurred by the use of any more prolix or other forms shall be borne by the party using the same, unless the Court shall otherwise direct.

Acceptance of service.

4. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

Service of writ.

5. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

Service out of the jurisdiction.

6. Whenever it appears fit to the Court or to a Judge in a case in which the cause of action has arisen within the jurisdiction, or is properly cognizable against a defendant within the jurisdiction, that any person out of the jurisdiction of the Court should be served with the writ or other process of the Court, the Court or Judge may order such service, or such notice in lieu of service, to be made or given in such manner and on such terms as may seem just.

Special endorsement of particulars of debts or liquidated demands. See C. L. P. Act, 1852, ss. 25, 27.

7. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money, payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether

under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially endorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off. R P. 7, 8

In case of non-appearance by the defendant where the writ of summons is so specially endorsed, the plaintiff may sign final judgment for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment, upon such terms as may seem just.

Where the defendant appears on a writ of summons so specially endorsed, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so endorsed, together with interest, if any, and costs; and the Court or Judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or Judge that he has a good defence to the action on the merits, or disclose such facts as the Court or Judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly. Permission to defend the action may be granted to the defendant on such terms and conditions, if any, as the Judge or Court may think just.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be endorsed with a claim that such account be taken. Special endorsement of particulars in cases of account.

In default of appearance on such summons, and after appearance unless the defendant, by affidavit

**R.P. 9, 10,**  
 11 or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

### *Parties.*

Mis-joinder  
 or non-  
 joinder of  
 parties.

9. No action shall be defeated by reason of the mis-joinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, in the manner prescribed by Rules of Court, and on such terms as may appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in such manner as may be prescribed by Rules of Court or by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

Representa-  
 tion of  
 parties  
 having same  
 interest.

10. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

11. Any two or more persons claiming or being



liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a Judge in Chambers for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

R.P. 11,  
12, 13, 14,  
15

12. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a Judge may on notice being given to such last mentioned person, in such manner and form as may be prescribed by Rules of Court, make such order as may be proper for having the question so determined.

Power to  
determine  
questions as  
against third  
parties.

13. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as may be prescribed by Rules of Court, or by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

Provision  
for case of  
doubt as to  
proper  
parties.

14. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially, interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

Trustees,  
executors,  
&c.

15. Married women and infants may respectively

Actions by

R.P. 16,  
16, 17, 18

married  
women and  
infants.

Parties  
where there  
are several  
liabilities on  
the same  
contract.

Abatement.

sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act ; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a Judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

16. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

17. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as may be prescribed by Rules of Court, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

### *Pleadings.*

Form of  
pleadings.

18. The following rules of pleadings shall be

substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate. R.P. 18, 19

Unless the defendant at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as shall be prescribed by Rules of Court, file and deliver to the defendant after his appearance a printed statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as aforesaid file and deliver to the plaintiff a printed statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner file and deliver a printed statement of his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

A demurrer to any statement may be filed in such manner and form as may be prescribed by Rules of Court.

The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

19. Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently disclose the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge. Power to settle issues.

R.P. 20,  
21, 22, 23,  
24

Counter-  
claims by  
defendant.

Power to  
give judg-  
ment for  
defendant  
for balance  
under  
counter-  
claim.

Joinder of  
several  
causes of  
action.

Power for  
Court to  
raise pre-  
liminary

20. A defendant may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

21. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

22. Subject to any Rules of Court, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

23. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

24. If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of

law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, or as may be prescribed by Rules of Court, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

R.P. 24,  
25, 26

questions of  
law in an  
action.

*Discovery.*

25. Subject to any Rules of Court, a plaintiff in any action shall be entitled to exhibit interrogatories to, and obtain Discovery from, any defendant, and any defendant shall be entitled to exhibit interrogatories to, and obtain Discovery from, a plaintiff or any other party. Any party shall be entitled to object to any interrogatory on the ground of irrelevancy, and the Court or a Judge, if not satisfied that such interrogatory is relevant to some issue in the cause, may allow such objection. No exceptions shall be taken to any answer, but the sufficiency or otherwise of any answer objected to as insufficient shall be determined by the Court or a Judge in a summary way.

Right of dis-  
covery on  
interroga-  
tories.

The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or Judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

26. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any

Production  
of docu-  
ments  
pleaded or  
proved.

R.P. 26,  
27, 28, 29

other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

Discovery as  
to docu-  
ments.

27. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

### *Place of Trial.*

Place of trial

28. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a Judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a Judge otherwise orders, be the county of Middlesex. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

List for trials  
in London  
and Middle-  
sex.

29. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared and the actions shall be allotted for trial in such manner as may be prescribed by Rules of Court, without reference to the division of the

High Court to which such actions may be attached.

R.P. 29,  
30, 31, 32,  
33, 34, 36

*Mode of Trial.*

30. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and Jury, or before an official or special Referee, with or without assessors:

Mode of  
trying  
actions.

31. The plaintiff may give notice of trial by any of the modes aforesaid, but the defendant may, upon giving notice, within such time as may be fixed by Rules of Court, that he desires to have any issues of fact tried before a Judge and Jury, be entitled to have the same so tried, or he may apply to the Court or a Judge for an order to have the action tried in any other of the said ways, and in such case the mode in which the action is to be tried or heard shall be determined by such Court or Judge.

Notice of  
mode of  
trial to be  
given.

32. In any action the Court or a Judge may, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials.

Different  
questions  
arising in  
same action  
may be tried  
in different  
ways.

33. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges.

Trials by  
jury.

34. Where an action or matter, or any question in an action or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial in open Court, *de die in diem*, in a similar manner as in actions tried by a jury.

Proceeding  
before an  
official  
Referee.

35. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising

Effect of  
decision of  
Referee.

R.P. 35,  
36, 37, 38.

therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the Referee, and to remit the action or any part thereof for re-trial or further consideration to the same or any other Referee.

*Evidence.*

Mode of  
giving  
evidence at  
trials.

36. In the absence of any agreement between the parties, and subject to any Rules of Court applicable to any particular class of cases, the witnesses at the trial of any cause or at any assessment of damages, shall be examined *vivâ voce* and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a Commissioner or examiner; provided that where it appears to the Court or Judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Evidence at  
interlocu-  
tory applica-  
tion.

37. Upon any interlocutory application evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Matter of  
affidavits.

38. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The cost of every affidavit which shall



unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. R.P. 38,  
39, 40, 41,  
42

39. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party. Admissions.

Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the cost of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

*Interlocutory Orders and Directions.*

40. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. Power for  
party to  
apply for  
order before  
termination  
of action.

41. The Lord Chancellor, with the concurrence of the Lord Chief Justice of England, may order any question of law or of fact which may arise in any action or matter to be transferred from any Judge to any other Judge, or to be tried or heard by any other Judge of the said High Court, and may confer on such Judge power to deal with the whole or any part of the matters in controversy. Power to  
transfer  
questions  
arising in  
actions.

42. The Court or a Judge may, at any stage of the proceedings in an action or matter, direct any necessary inquiries or accounts to be made or Accounts  
and inquiries

R. P. 42,  
43, 44, 45

taken, notwithstanding that it may appear that there is some special or further relief sought for or some special matter to be tried, as to which it may be proper that the cause should proceed in the ordinary manner.

Interim  
orders as to  
subject-  
matter of  
litigation.

43. When by any contract a *prima facie* case of liability is established, and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Power to  
make orders  
for sale of  
goods.

44. It shall be lawful for the Court or a Judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise, which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Power for  
Court to  
make  
interim  
orders as to  
preservation  
or examina-  
tion of pro-  
perty, exa-  
mination of  
witnesses,  
&c.

45. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. The Court or a Judge may also, in all cases where it shall appear necessary for the purpose of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness

or person, and may order any deposition so taken to be filed in the court, and may empower any party to any action or other proceeding to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

R.P. 45,  
46

46. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly, discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed in the manner prescribed by Rules of Court, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave. Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just.

Discontinu-  
ance of  
action.

*Costs.*

R.P. 47,  
48, 49, 50,  
51

Costs.

47. Subject to the provisions of this Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other persons of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity.

*New Trials and Appeals.*

Restriction  
on new trials

48. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

Abolition of  
bills of  
exceptions  
and proceed-  
ings in error.

49. Bills of exceptions and proceedings in error shall be abolished.

Mode of  
appealing.

50. All appeals to the Court of Appeal shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

Notice of  
appeal.

51. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not

a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

R.P. 51,  
52, 53.

52. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a decree or judgment upon the merits, at the trial or hearing of any action or matter, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment and make any decree or order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

General  
power of  
Appeal  
Court.

53. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends,

Regulations  
as to cross  
appeals.

R. P. 53,  
54, 55, 56,  
57, 58

upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by Rules of Court or by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers by this Act conferred upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Mode of  
bringing  
evidence  
before Court  
of Appeal.

54. When any question of fact is involved in an appeal, the evidence taken in the Court below shall be brought before the Court of Appeal in such manner as may be prescribed by Rules of Court or by Special order.

Power for  
Court  
to refer to  
notes, &c.

55. If, upon the hearing of an Appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Want of  
appeal from  
interlocu-  
tory order  
not to limit  
powers of  
Court of  
Appeal.

56. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

Limit of  
time in  
appeals.

57. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal, or from such time as may be prescribed by Rules of Court. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be prescribed by Rules of Court, or directed under special circumstances by the Court of Appeal.

Appeal not

58. An appeal shall not operate as a stay of

execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

R.P. 58

to stay proceedings.

## STATUTES REFERRED TO

IN THE

*JUDICATURE ACT, 1873.*

## CROWN CASES RESERVED ACT,

*11 and 12 Vict., chap. 78.*[~~See~~ This Statute is referred to in sec. 100, page 64.]

An Act for the further Amendment of the Administration of the Criminal Law. [31st August, 1848.]

Whereas it is expedient to provide a better mode than that now in use of deciding any difficult question of law which may arise in criminal trials in any Court of Oyer and Terminer and Gaol Delivery, and to make further amendments in the administration of the Criminal Law :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same,

## § 1, 2

Questions of law may be reserved at Sessions of the Peace for consideration of Judges.

1. That when any person shall have been convicted of any treason, felony, or misdemeanor before any Court of Oyer and Terminer or Gaol Delivery, or Court of Quarter Sessions, the Judge or Commissioner, or Justices of the Peace before whom the case shall have been tried may, in his or their discretion, reserve any question of law which shall have arisen on the trial for the consideration of the Justices of either Bench and Barons of the Exchequer ; and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he or they may think fit ; and in either case the Court in its discretion shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and to receive judgment, or to render himself in execution, as the case may be.

Questions reserved to be certified to the Judges.

2. And be it enacted, that the Judge or Commissioner or Court of Quarter Sessions shall thereupon state, in a case signed in the manner now usual, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen ; and such case shall be transmitted to the said Justices and Barons ; and the said Justices and Barons shall thereupon have full power and authority to hear and finally determine the said question or



questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said Justices and Barons, the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other Session of Oyer and Terminer or Gaol delivery, or other Sessions of the Peace, if no judgment shall have been before that time given, as they shall be advised, or to make such other order as justice may require; and such judgment and order, if any, of the said Justices and Barons, shall be certified under the hand of the presiding Chief Justice or Chief Baron to the Clerk of Assize or his Deputy, or to the Clerk of the Peace or his Deputy, as the case may be, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the Clerk of Assize or his Deputy, or the Clerk of the Peace or his Deputy, as the case may be, in the form, as near as may be or to the effect mentioned in the Schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the Sheriff or Gaoler in whose custody the person convicted shall be; and the said certificate shall be a sufficient warrant to such Sheriff or Gaoler, and all other persons, for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment, and for the discharge of the person convicted from further imprisonment, if the judgment shall be reversed, avoided, or arrested, and in that case such Sheriff or Gaoler shall forthwith discharge him, and also the next Court of Oyer and Terminer and Gaol Delivery or Sessions of the Peace shall vacate the recognizance of bail, if any; and if the Court of Oyer and Terminer and Gaol Delivery or Court of Quarter Sessions shall be directed to give judgment, the said Court shall proceed to give judgment at the next Session.

3. And be it enacted, that the jurisdiction and authorities by this Act given to the said Justices of either Bench, and Barons of the Exchequer, shall and may be exercised by the said Justices and Barons, or five of them at the least, of whom the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of such chiefs at least, shall be part, being met in the Exchequer Chamber or other convenient place; and the judgment or judgments of the said Justices and Barons shall be delivered in open Court, after hearing Counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued, in like manner as the judgments of the Superior Courts of Common Law at *Westminster* or *Dublin*, as the case may be, are now delivered.

4. And be it enacted, that the said Justices and Barons, when a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

5. And be it enacted, that whenever any writ of error shall be brought upon any judgment on any indictment, information, presentment, or inquisition, in any criminal case, and the Court of Error shall reverse the judgment, it shall be competent for such Court of Error either to pronounce the proper judgment or to remit the record to the Court below, in order that such Court may pronounce the proper judgment upon such indictment, information, presentment, or inquisition.

6. And be it enacted, that every person who shall forge or alter, shall offer, utter, dispose of, or put off, knowing the same to be forged

§ 2, 3, 4  
5, 6

Quorum of Judges; their judgments to be delivered in open Court.

Case or certificate may be sent back for amendment.

When judgment is reversed on writ of error, record may be remitted to Court below for judgment.

Penalty for forgery.

§ 6, 7, 8

Act not to  
extend to  
Scotland.

Act may be  
amended, &c.

or altered, any certificate of or copy certified by a Chief Justice, or any certificate of or copy certified by a Clerk of Assize or his Deputy, or the Clerk of the Peace or his Deputy, as the case may be, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding ten years, or be imprisoned for any term not exceeding three years, with or without hard labour and solitary confinement, both or either, at the discretion of the Court before which he shall be tried.

7. And be it enacted, that this Act shall not extend to *Scotland*.

8. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this present Session of Parliament.

#### SCHEDULE.

Whereas at the Session of the Peace for the County of  
held on before and  
others their fellows, [or at the Session of Oyer and Terminer and  
Gaol Delivery held for the County of on  
before, among others, Sir A. B. Knight, one of the Justices of the  
Court of and here name  
the *quorum*, Commissioners, Justices of Oyer and Terminer and  
Gaol Delivery,] A. B., late of labourer,  
having been found guilty of felony, and judgment thereupon given,  
that [state the substance], the Court before whom he was tried re-  
served a certain question of law for the consideration of the  
Justices of either Bench and the Barons of the Exchequer, and exe-  
cution was thereupon respited in the meantime :

This is to certify, That the said Justices and Barons having met  
in the Exchequer Chamber at Westminster [or Dublin, *as the case  
may be,*] on the day of it was  
considered by the said Justices and Barons there that the judgment  
aforesaid should be annulled, and an entry made on the record, that  
the said A. B. ought not, in the judgment of the said Justices and  
Barons, to have been convicted of the felony aforesaid ; and you are  
therefore hereby required forthwith to discharge the said A. B. from  
your custody.

To the Gaoler of and the Sheriff of  
and all others whom it may concern.  
(Signed) E. F.

Clerk of the Peace for the County of  
[or Clerk of the Assize for  
*as the case may be*].

## COMMON LAW PROCEDURE ACT, 1854,

*17 and 18 Vict., chap. 125.*

[~~As~~ Only the sections of this Act referring to arbitration, arbitrators, and their awards referred to in sec. 59, page 42, are here given.]

An Act for the further amendment of the process, practice, and mode of pleading in and enlarging the jurisdiction of the Superior Courts of Common Law at *Westminster*, and of the Superior Courts of Common Law of the Counties Palatine of *Lancaster* and *Durham*.  
[12th August, 1854.]

\* \* \* \* \*

§ 3, 4, 5

3. If it be made appear, at any time after the issuing of the writ, to the satisfaction of the Court or Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an Arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to the judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such Referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

Power to  
Court or  
Judge to  
direct arbi-  
tration  
before trial.

4. If it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in such account may depend upon a question of Law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the Jury or Judge upon such issue or issues, shall be taken and acted upon by the Arbitrator as conclusive.

Special case  
may be  
stated, and  
fact tried.

5. It shall be lawful for the Arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity at *Westminster*, if he shall think fit, and if it is provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case, for the opinion of the Court, and when an action is referred,

Arbitrator  
may state  
special case.

§ 5, 6, 7, 8,  
9, 10, 11

Power to  
judge to di-  
rect arbitra-  
tion at time  
of trial,  
when issues  
of fact left to  
his decision.

Proceedings  
before and  
power of  
such arbitra-  
tor.

Power to  
send back to  
arbitrator.

Application  
to set aside  
the award.

Enforcing of  
awards with-  
in period for  
setting them  
aside.

If action  
commenced  
by one party  
after all have  
agreed to ar-  
bitration,  
court or  
judge may  
stay pro-  
ceedings.

judgment, if so ordered, may be entered according to the opinion of the Court.

6. If upon the trial of any issue of fact by a Judge under this Act, it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an Arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to a Judge of any County Court, upon such terms as to costs, and otherwise, as such Judge shall think reasonable; and the award or certificate of such Referee shall have the same effect as hereinbefore provided as to the award or certificate of a Referee before trial; and it shall be competent for the Judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

7. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the Arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or Judge's order.

8. In any case where reference shall be made to arbitration as aforesaid the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said Arbitrator, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.

9. All applications to set aside any award made on a compulsory reference under this Act, shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

10. Any award made on a compulsory reference under this Act may, by authority of a Judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

11. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them, shall be referred to arbitration, and any one or more of the parties so agreeing, or any persons or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the Court in which action or suit is brought, or a Judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all Acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or Judge may seem fit: Provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.

12. If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single Arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an Arbitrator; or if any appointed Arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two Arbitrators are at liberty to appoint an Umpire or third Arbitrator, such parties or Arbitrators do not appoint an Umpire or third Arbitrator; or if any appointed Umpire or third Arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or Arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the Arbitrators, as the case may be, with a written notice to appoint an Arbitrator, Umpire, or third Arbitrator respectively; and if within seven clear days after such notice shall have been served no Arbitrator, Umpire, or third Arbitrator be appointed, it shall be lawful for any Judge or any of the Superior Courts of law or equity at *Westminster*, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an Arbitrator, Umpire, or third Arbitrator, as the case may be, and such Arbitrator, Umpire, and third Arbitrator respectively shall have the like power to act in the reference, and make an award, as if he had been appointed by consent of all parties.

§ 12, 13,  
14, 15

On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.

13. When the reference is or is intended to be to two Arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new Arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an Arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an Arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an Arbitrator may appoint such Arbitrator to act as sole Arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the Court or a Judge may revoke such appointment, on such terms as shall seem just.

When reference is to two arbitrators and one party fails to appoint, other party may appoint arbitrator to act alone.

14. When the reference is to two Arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an Umpire, or provide otherwise for the appointment of an Umpire, the two Arbitrators may appoint an Umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Two arbitrators may appoint umpire.

15. The Arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring to the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the Superior Court of which such submission, document, or order is or may be made a rule or order, or for any Judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the awards; and if no period be stated for the enlargement in such con-

Award to be made in three months, unless parties or court enlarge time.

§ 15, 16, 17,  
98, 104,  
108

sent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an Umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the Arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the Umpire a notice in writing stating that they cannot agree.

Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.

16. When any award made on any such submission, document, or order of reference as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorizing the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the Sheriff as on a judgment in ejectment.

Agreement or submission in writing may be made rule of court, unless a contrary intention appear.

17. Every agreement or submission to arbitration by consent whether by deed or instrument in writing, not under seal, may be made a rule of any one of the Superior Courts of Law or Equity at *Westminster*, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a Rule of Court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such Superior Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated in the award for the opinion of one of the Superior Courts, and such Court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties, been made a Rule of Court, such document may be made a rule only of the Court specified in the award and when in any case the document authorising the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

Interpretations of terms.

99. In the construction of this Act the word "Court" shall be understood to mean any one of the Superior Courts of Common Law at *Westminster*; and the word "Judge" shall be understood to mean a Judge or Baron of any of the said Courts; and the word "Master" shall be understood to mean a Master of any of the said Courts; and the word "action" shall be understood to mean any personal action in any of the said Courts.

Commencement of Act.

104. The provisions of this Act shall come into operation on the twenty-fourth day of *October* in the year of our Lord one thousand eight hundred and fifty-four.

Short title of Act.

106. In citing this Act in any instrument, document, or proceeding it shall be sufficient to use the expression "The Common Law Procedure Act, 1854."

## THE COUNTY COURTS ACT, 1867,

*30 and 31 Vict., chap. 142.*

[~~As~~ Only the sections incorporated by sec. 67, page 45, are here given.]

An Act to amend the Acts relating to the jurisdiction of the County Courts. [20th August, 1867.]

§ 5, 7, 8

5. If in any action commenced after the passing of this Act in any of Her Majesty's Superior Courts of record the plaintiff shall recover a sum not exceeding twenty pounds if the action is founded on contract, or ten pounds if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the Judge certify on the record that there was sufficient reason for bringing such action in such Superior Court, or unless the Court or a Judge at Chambers shall, by rule or order, allow such costs.

Costs not recoverable in Superior Courts where less than £20 on contract or £10 on tort.

7. Where in any action of contract brought or commenced in any of Her Majesty's Superior Courts of Common Law the claim endorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge at Chambers for a summons to the plaintiff to show cause why such action should not be tried in the County Court or one of the County Courts in which the action might have been commenced; and on the hearing of such summons the Judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the County Court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise, by the registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such County Court as if the action had been originally commenced in such County Court; and the costs of the parties in respect of proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the Scale of costs in use in the County Courts, and the costs of the proceedings previously had in the Superior Court shall be allowed according to the scale in use in such latter Court.

In certain cases Judge of Superior Courts may order Cause to be tried in County Court.

8. Where any suit or proceeding shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a County Court, it shall be lawful for any of the parties thereto to apply at Chambers to the Judge to whose Court the said

Proceedings in Equity may be transferred

## § 8, 10

to County  
Courts  
which might  
have com-  
menced  
therein.

suit or proceeding shall be attached, to have the same transferred to the County Court or one of the County Courts in which the same might have been commenced, and such Judge shall have power upon such application, or without such application, if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the County Court.

Actions for  
malicious  
prosecution,  
&c., brought  
in Superior  
Courts may  
be remitted  
to County  
Courts by  
Judge.

10. It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a Superior Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a Judge of the Court in which the action is brought shall have power to make an order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendants costs to the satisfaction of one of the Masters of the said Court, or satisfy the Judge that he has a cause of action fit to be prosecuted in the Superior Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the Judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of such County Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their Attorneys; and the County Court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said County Court should have power to try the said action and the same had been commenced by plaint in the said County Court; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings in the Superior Courts shall be allowed according to the scale in use in such latter Court.



## THE PROMISSORY OATHS ACT, 1868,

*31 and 32 Vict., chap. 72.*

[This statute is referred to in sec. 9, page 6.]

An Act to amend the Law relating to Promissory Oaths.

[31st July, 1868.]

Whereas it is expedient to amend the law relating to Promissory oaths: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Promissory Oaths Act, 1868."

§ 1, 2, 3, 4,  
5, 6

## PART I.

## OATHS TO BE CONTINUED.

*Oath of Allegiance.—Official and Judicial Oaths.*

2. The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,  
'I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God.'
3. The oath in this Act referred to as the official oath shall be in the form following; that is to say,  
'I do swear that I will well and truly serve her Majesty Queen Victoria in the office of So help me God.'
4. The oath in this Act referred to as the judicial oath shall be in the form following; that is to say,  
'I do swear that I will well and truly serve our Sovereign Lady Queen Victoria in the office of , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection of ill-will. So help me God.'
5. The oath of allegiance and official oath shall be tendered to and taken by each of the officers named in the first part of the schedule annexed hereto as soon as may be after his acceptance of office by the officer, and in the manner in that behalf mentioned in the said first part of the said schedule.
6. The oath of allegiance and judicial oath shall be taken by each of the officers named in the second part of the said schedule hereto as soon as may be after his acceptance of office, and such oaths shall be tendered and taken in manner in which the oaths required to be taken by such officer previously to the passing of this Act on entering his office would have been tendered and taken.

Form of  
oath of  
allegiance.Form of  
official oath.Form of  
judicial oath.Persons to  
take the oath  
of allegiance  
and official  
oath.Persons to  
take the oath  
of allegiance  
and judicial  
oath.

§ 7, 8, 9,  
10, 11, 12

Penalty on  
not taking  
required  
oath.

Form of oath  
of allegiance  
in this Act  
substituted  
for form in  
certain other  
Acts.

Prohibition  
of oath of  
allegiance  
except in  
accordance  
with Act.

The name of  
the  
Sovereign  
for the time  
being to be  
used in the  
oath.

Provision in  
favour of  
persons per-  
mitted to  
make  
affirmations.

7. If any officer specified in the schedules hereto declines or neglects, when any oath required to be taken by him under this Act is duly tendered, to take such oath, he shall, if he has already entered on his office, vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled, in respect of the same appointment to the same office, to take such oath or make such affirmation more times than one.

8. The form of the oath of allegiance provided by this Act shall be deemed to be substituted in the case of The Clerical Subscription Act, 1865, for the form of the oath of allegiance and supremacy therein referred to; in the case of The Parliamentary Oaths Act, 1866, for the form of the oath thereby prescribed to be taken and subscribed by members of Parliament on taking their seats; and in the case of The Office and Oaths Act, 1867, for the form of the oaths of allegiance, supremacy, and abjuration therein referred to; and all the provisions of the said Acts shall apply to the oath substituted by this section in the same manner as if that form of oath were actually inserted in each of the said Acts in the place of the oath for which it is substituted.

9. No person shall be required or authorised to take the oaths of allegiance, supremacy, and abjuration, or any of such oaths, or any oath substituted for such oaths, or any of them, or to make any declaration to the like effect of such oaths, or any of them, except the persons required to take the oath of allegiance by this Act and The Clerical Subscription Act, 1865, and The Parliamentary Oaths Act, 1866, or one of such Acts, any Act of Parliament, charter, or custom to the contrary notwithstanding; and no person shall be required or authorised to take the oath of assuurance in Scotland.

#### *Miscellaneous Provisions as to Oaths.*

10. Where in any oath under this Act the name of Her present Majesty is expressed, the name of the Sovereign of this kingdom for the time being shall be substituted from time to time.

11. When an oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath may, instead of taking such oath, make a solemn affirmation in the form of the oath hereby appointed, substituting the words "solemnly, sincerely, and truly declare and affirm," for the word "swear," and omitting the words "So help me God."

### PART II.

#### OATHS TO BE ABOLISHED.

##### *Substitution of Declaration for Oaths.*

Regulations  
as to substi-  
tution of  
declarations  
for oaths.

12. The following regulations shall be enacted with respect to the substitution of declarations for oaths; (that is to say,)

1. Where before the passing of this Act an oath was required to be taken by any person on or as a condition of accepting any employment or office in Her Majesty's honourable band of gentlemen at arms or bodyguard of yeomen of the guard, or in any other department of Her Majesty's household, in such case a declaration of fidelity in office shall be substituted with the addition (in cases where it seems meet to Her Majesty by order in Council to make such addition) of a declaration of secrecy to be observed by the declarant with respect to matters coming within his cognizance by reason of his employment or office:

2. Where before the passing of this Act an oath was required to be taken by any person on or as a condition of accepting any office in or under a municipal corporation, or on or as a condition of admission to membership in or participation in the privileges of any municipal corporation, there shall be substituted for such oath, in the case of an office, a declaration that the declarant will faithfully perform the duties of his office; and in the case of admission to membership or participation in the privileges of a municipal corporation, a declaration that the declarant will faithfully demean himself as a member of or participator in the privileges of such corporation:
3. Where before the passing of this Act an oath was required to be taken on or as a condition of admission to membership or fellowship or participation in the privileges of any guild, body corporate, society, or company, a declaration to the like effect of such oath shall be substituted; provided that if any two or more of the members of such guild, body corporate, society, or company, with the concurrence of the majority of the members present and voting at a meeting specially summoned for the purpose, object to any statement contained in such declaration on the ground of its relating to duties which by reason of change of circumstances have become obsolete, they may appeal to one of Her Majesty's principal Secretaries of State to omit such statement, and the decision of such Secretary of State shall be final:
4. Where in any case not otherwise provided for by this Act or included within the saving clauses thereof an oath is required to be taken by any person on or as a condition of his accepting any employment or office, a declaration shall be substituted for such oath to the like effect in all respects as such oath:
5. The making a declaration in pursuance of this section instead of oath shall in all respects have the same effect as the taking the oath for which such declaration is substituted would have had if this Act had not passed.
13. If any person required by this Act to make a declaration instead of on oath declines or neglects to make such declaration, he shall be subject to the same penalties and disabilities, if any, as he would have been subjected to for declining or neglecting to take the oath for which the declaration provided by this Act is substituted. Penalty on not making declaration required by this Act.

## PART III.

*Saving Clause.*

14. Nothing in this Act contained shall affect—
1. The Clerical Subscription Act, 1865, or The Parliamentary Oaths Act, 1866, except in relation to the form of oath in manner hereinbefore mentioned: Not to affect matters herein stated
2. The oath taken by privy councillors of the United Kingdom, or by privy councillors of *Ireland*, with the exception that the form of the oath of allegiance prescribed by this Act shall be substituted for the oath of allegiance, supremacy, and abjuration now required to be taken by privy councillors:
3. The oath of homage taken by archbishops and bishops in the presence of Her Majesty:
4. The oath of canonical obedience to the bishop, or the oath of due obedience to the archbishop, taken by bishops on consecration, and which oaths are reserved by The Clerical Subscription Act, 1865:
5. Any oath taken by peers, baronets, or knights on their creation, with this exception, that where the oaths of allegiance, supre-

§ 14, 15, 16

macy, or abjuration, or any two or one of such oaths, or any oath substituted for such oaths or any of them, are or is required to be taken by such peers, baronets, or knights, there shall be substituted for such oaths, or any two or one of them, the oath of allegiance prescribed by this Act :

6. Any oath required to be taken in the army, the marines, the militia, the yeomanry, or the volunteers :
7. The oath taken by aliens on being naturalised, with this exception, that the form of the oath of allegiance prescribed by this Act shall be substituted for the form of the oath of allegiance required so to be taken by aliens previously to the passing of this Act :
8. The eighteenth section of The Merchant Shipping Act, 1854, or any provision to be substituted therefore, whereby certain persons claiming to be owners of *British* ships are required to take the oath of allegiance, with this exception, that the form of the oath of allegiance as prescribed by this Act shall be substituted for the form of the oath of allegiance contained in the said Merchant Shipping Act, 1854 :
9. Any power of substituting a declaration for an oath vested in the Commissioners of Her Majesty's Treasury by the Act of the session of the fifth and sixth years of the reign of His late Majesty King *William* the Fourth, chapter sixty-two :
10. Any oath required or authorised by Act of Parliament to be taken or made for the purpose of attesting any fact or verifying any account or document :
11. Any oath or declaration taken in judicial ratification by married women, as the same by the law and practice of *Scotland* have been in use to be taken :
12. Any oath required to be taken by any juror, witness, or other person in pursuance of any Act of Parliament or custom as preliminary to or in the course of any civil, military, criminal, or other trial, inquest, or proceedings of a judicial nature, including any arbitration, or as preliminary to or in the course of any proceedings before a committee of either House of Parliament, or before any commissioner or other special tribunal appointed by the Crown.

Saving of powers of alteration hitherto exercised.

General saving as to matters herein stated

15. Where a declaration has been substituted for an oath under this Act, any person, guild, body corporate, or society which before the passing of this Act had power to alter such oath, or to substitute another oath in its place, may exercise a like power with regard to such declaration.

16. Where previously to the passing of this Act the taking of any oath formed a condition precedent or subsequent to the attainment by any person of any office, privilege, exemption, or other benefit, and such person is by this Act prevented from fulfilling such condition, he shall nevertheless, on complying with the other conditions, if any, attached to the attainment of such office, privilege, exemption, or other benefit, be entitled thereto in the same manner as if the condition relating to such oath, and any directions as to the certificate or registration of the taking of such oath, or otherwise, had been fulfilled and performed.

## SCHEDULE.

## FIRST PART.

*England.*

First Lord of the Treasury.  
 Chancellor of the Exchequer.  
 Lord Chancellor.  
 President of the Council.  
 Lord Privy Seal.  
 Secretaries of State.  
 First Lord of the Admiralty.  
 Chief Commissioner of Works and Public Buildings.  
 President of the Board of Trade.  
 President of the Poor Law Board.  
 Lord Steward.  
 Lord Chamberlain.  
 Earl Marshal.  
 Master of the Horse.  
 Commander-in-Chief.  
 Chancellor of the Duchy of Lancaster.  
 Paymaster-General.  
 Postmaster-General.

The oath as to England is to be tendered by the Clerk of the Council, and taken in presence of Her Majesty in Council, or otherwise as Her Majesty shall direct.

*Scotland.*

The Lord Keeper of the Great Seal.  
 The Lord Keeper of the Privy Seal.  
 The Lord Clerk Register.  
 The Lord Advocate.  
 The Lord Justice Clerk.

The oath as to Scotland is to be tendered by the Lord President of the Court of Session at a sitting of the Court.

*Ireland.*

Lord Lieutenant.  
 Lord Chancellor.  
 Commander of the Forces.  
 Chief Secretary for Ireland.

The oath as to Ireland is to be tendered by the Clerk of the Council, and taken at a meeting of the Privy Council in Ireland.

## SECOND PART.

*England.*

The Lord Chancellor of Great Britain.  
 The Lord Chief Justice.  
 The Master of the Rolls.  
 The Chief Justice of the Common Pleas.  
 The Chief Baron of the Exchequer.  
 The Lord Justices of the Court of Appeal in Chancery.  
 The Vice-Chancellors.  
 The Puisne Justices of the Queen's Bench.  
 The Puisne Justices of the Common Pleas.  
 The Puisne Barons of the Exchequer.  
 The Judge of the Admiralty Court.  
 The Recorder of London.  
 The Judge of the Probate Court.  
 Justices of the Peace for Counties and Boroughs.

*Scotland.*

The Lord Justice-General and President of the Court of Session in Scotland, the Lord Justice-Clerk of Scotland, the Judges of the Court of Session in Scotland, Sheriffs of Counties, and Justices of the Peace for the Counties and Burghs.

*Ireland.*

The Lord Chancellor of Ireland.  
The Lord Chief Justice.  
The Master of the Rolls.  
The Chief Justice of the Common Pleas.  
The Chief Baron of the Exchequer.  
The Lord Justice of the Court of Appeal in Chancery.  
The Vice-Chancellor.  
The Puisne Justices of the Queen's Bench.  
The Puisne Justices of the Common Pleas.  
The Puisne Barons of the Exchequer.  
The Judge of the Probate Court.  
The Judges of the Landed Estates Court.  
The Judge of the Admiralty Court.  
The Judges of the Court of Bankruptcy and Insolvency.  
The Recorder of Dublin.  
Justices of the Peace for Counties and Boroughs.

## COMMON LAW PROCEDURE ACT, 1852,

*15 and 16 Vict., chap. 76.*

[~~43~~ Only the sections of this Act referred to in the side note to Rules of Procedure, numbered 7, page 68, are here given.]

An Act to amend the Process, Practice, and mode of pleading in the Superior Courts of Common Law at *Westminster*, and in the Superior Courts of the Counties Palatine of *Lancaster* and *Durham*. § 25, 27,  
235  
[30th June, 1852.]

25. In all cases where the defendant resides within the jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, as, for instance, on a Bill of Exchange, promissory note, or cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of liquidated money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt, or on a guarantee, may be whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, writ. the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special endorsement of the particulars of his claim, in the form contained in the Schedule (A.) to this act annexed, marked No. 4., or to the like effect; and when a writ of summons has been endorsed in the special form hereinbefore mentioned, the endorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered, unless ordered by the court or a judge. Special endorsement of the particulars of liquidated demands may be made on the writ.

27. In case of non-appearance by the defendant, where the writ of summons is endorsed in the special form hereinbefore provided, it shall and may be lawful for the plaintiff, on filing an affidavit of personal service of the writ of summons, or a judge's order for leave to proceed under the provisions of this act, and a copy of the writ of summons, at once to sign final judgment in the form contained in the Schedule (A.) to this act annexed, marked No. 5., (on which judgment no proceeding in error shall lie), for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified, if any, to the date of the judgement, and a sum for costs, (to be fixed by the Masters of the said Superior Courts, or any three of them, subject to the approval of the judge's thereof, or any eight of them, of whom the Lord Chief Justices and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way; and the plaintiff may upon such judgment issue execution at the expiration of eight days from the last day for appearance and not before: provided always, that it shall be lawful for the court or a judge, either before or after final judgment, to let in the defendant to defend upon an application, supported by satisfactory affidavits accounting for the non-appearance, and disclosing a defence upon the merits. Final judgment upon writ specially endorsed in default of appearance.

235. In citing this act in any instrument, document, or proceed- Short title ing, it shall be sufficient to use the expression "The Common Law of Act. Procedure Act, 1852."

## SCHEDULE (A.) referred to in the foregoing Act.

## No. 4.

*Special Indorsement.*

[After the indorsement required by the 8th section of this act, this special indorsement may be inserted.]

The following are the particulars of plaintiff's claim :

	£	s.	d.
1849.—June 20. Half-year's rent to this day of house			
and premises in street, Westminster . . . .	25	10	0
Sept. 12. Ten sacks of flour at 40s. . . . .	20	0	0
Dec. 1. Money received by defendant . . . . .	17	0	0
	62	10	0
Paid . . . . .	15	0	0
Balance due . . . . .	£47	10	0

Or,

To butchers' meat supplied between the 1st of January	
1849, and the 1st of January, 1850 . . . . .	£52
Paid . . . . .	20
Balance . . . . .	£32

[If any account has been delivered, it may be referred to, with its date, or the plaintiff may give such a description of his claim as in a particular of demand, so as to prevent the necessity of an application for further particulars.]

Or,

£50 principal and interest due on a bond dated the . . . day of . . . conditioned for the payment of £100.

Or,

£90 principal and interest due on a covenant contained in a deed dated the . . . day of . . . to pay £100, and interest.

Or,

A penalty of £100. under the statute 55 Geo. 3, c. 137.

Or,

£85 on a bill of exchange for £100, dated the 2nd February, 1849, accepted or drawn, or indorsed by the defendant.

Or,

£50 on a guarantee dated the 1st of January, 1850, whereby the defendant guaranteed the due payment by E.F. of goods supplied or to be supplied to him.

[To any of the above may be added, in cases where interest is payable, "the plaintiff also claims interest on £ . . . of the above sum from the date of the writ until judgment."]

N.B.—Take notice, that if a defendant served with this writ within the jurisdiction of the court do not appear according to the exigency thereof, the plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed [with interest at the rate specified], and the sum of £ . . . for costs, and issue execution at the expiration of eight days from the last day for appearance.

## No. 5.

In the Queen's Bench :

On the . . . day of . . . A.D. 1850.

[Day of Signing the Judgment.]

England, } A.B. in his own person [or, by his attorney] sued out  
to wit. } a writ of summons against C.D., indorsed according to  
the "Common Law Procedure Act, 1852," as follows :

[Here copy Special Indorsement]

And the said C.D. has not appeared : therefore it is considered that the said A.B. recover against the said C.D. £ . . . , together with £ . . . for costs of suit.



PARLIAMENTARY ELECTIONS ACT, 1868,

*31 and 32 Vict., chap. 125.*

[~~43~~ Only the sections of this Act providing a rota referred to in sec. 38, page 33, are here given.]

An Act for amending the laws relating to Election Petitions, and providing more effectually for the prevention of Corrupt Practices at Parliamentary Elections. [31st July, 1868.]

Whereas it is expedient to amend the laws relating to Election Petitions, and to provide more effectually for the prevention of Corrupt Practices at Parliamentary Elections :

Be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

§ 1, 11

1. This Act may be cited for all purposes as "The Parliamentary Elections Act, 1868."

Short title of Act.

11. The following enactments shall be made with respect to the trial of Election Petitions under this Act :

Mode of trial of election petitions.

1. The Trial of every Election Petition shall be conducted before a Puisne Judge of one of Her Majesty's Superior Courts of Common Law at *Westminster* or *Dublin*, according as the same shall have been presented to the Court at *Westminster* or *Dublin*, to be selected from a rota to be formed as hereinafter mentioned :
2. The members of each of the Courts of Queen's Bench, Common Pleas, and Exchequer in *England* and *Ireland* shall respectively, on or before the third day of *Michaelmas* term in every year, select, by a majority of votes, one of the Puisne Judges of such Court, not being a member of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year :
3. If in any case the members of the said Court are equally divided in their choice of a Puisne Judge to be placed on the rota, the Chief Justice of such Court (including under that expression the Chief Baron of the Exchequer) shall have a second or casting vote :
4. Any Judge placed on the rota shall be re-eligible in the succeeding or any subsequent year :
5. In the event of the death or the illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the Court to which he belongs shall fill up the vacancy by placing on the rota another Puisne Judge of the same Court :

§ 11, 59

6. The Judges for the time being on the rota shall, according to their seniority, respectively try the election petitions standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement :
  7. Where it appears to the Judges on the rota, after due consideration of the best of petitions under this Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional Judge or Judges be appointed to assist the Judges on the rota, each of the said Courts (that is to say, the Court of Exchequer, the Court of Common Pleas, and the Court of Queen's Bench, in the order named shall, on and according to the requisition of such Judges on the rota, select, in manner hereinbefore provided, one of the Puisne Judges of the Court to try election petitions for the ensuing year ; and any Judge so selected shall, during that year, be deemed to be on the rota for the trial of election petitions :
  8. Her Majesty may, in manner heretofore in use, appoint an additional Puisne Judge to each of the Courts of Queen's Bench, the Common Pleas, and the Exchequer in *England* :
  9. Every election petition shall, except where it raises a question of law for the determination of the Court, as hereinafter mentioned, be tried by one of the Judges hereinbefore in that behalf mentioned, hereinafter referred to as the Judge sitting in open Court without a jury :
  10. Notice of the time and place at which an election petition will be tried shall be given, not less than 14 days before the day on which the trial is held, in the prescribed manner.
- \* \* \*
59. This Act shall be in force until the expiration of three years from the passing of such Act, and to the end of the then next Session of Parliament.
- [N.B. Extended by 35 and 36 Vict., chap. 88 ; and 36 and 37 Vict., chap. 75.]

## COURTS OF JUSTICE ACT, 1869,

*32 and 33 Vict., chap. 91.*[~~See~~ This statute is referred to in sec. 63, page 43.]

An Act for Amending the Law relating to the Salaries, Expenses, and Funds of Courts of Law in England. [9th August, 1869.]

Whereas it is expedient that the expenditure for the Courts of Justice should be (so far as may be) defrayed out of moneys to be provided for that purpose by Parliament, or out of the Consolidated Fund:

And whereas in the second part of the first and second schedules to this Act there are shown the stock and cash which on the several days mentioned in those schedules belonged to the Courts of Chancery and Bankruptcy (as distinguished from the stock securities and cash which are the property of the suitors therein):

And whereas the charges on such stock and cash are shown in the third and fourth schedule to this Act:

And whereas it is expedient that on the charges thereon being transferred to the Consolidated Fund or moneys provided by Parliament, the said stock and cash should be transferred to the public:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

§ 1, 2, 3

*Preliminary.*

1. This Act may be cited as "The Courts of Justice (Salaries and Funds) Act, 1869." Short title.

2. This Act shall not come into operation until the first day of October one thousand eight hundred and sixty nine, which date is Commence-  
ment of Act.  
hereinafter referred to as the commencement of this Act.

3. In this Act—

The term "the Treasury" means the Commissioners of Her Majesty's Treasury for the time being, or any two or more of them;

The term "Court of Chancery" means the High Court of Chancery of England, and includes all offices mentioned in the third schedule to this Act;

The term "Court of Admiralty" means the High Court of Admiralty of England;

The term "Court of Bankruptcy" means, except where otherwise expressly mentioned, the Court of Bankruptcy in London as constituted at the passing of this Act and the District Courts of Bankruptcy, and includes any Court, whether constituted before or after the commencement of this Act, which for the time being exercises the powers of the late Court for the Relief of Insolvent Debtors in England, so far as relates to such late Court.

Definition of  
terms.

§ 4, 5, 6, 7

*Court of Chancery.*

Transfer of  
stock and  
cash to  
National  
Debt Com-  
missioners.

4. As soon as may be after the commencement of this Act the Governor and Company of the Bank of England shall, upon an order of the Lord Chancellor to be made in that behalf, and without any draft from the Accountant-General, or act done by him, transfer to the account of the Commissioners for the Reduction of the National Debt all sums of stock and cash which on the commencement of this Act may be standing in the books of the Bank of England in the name of the Accountant-General of the Court of Chancery to the credit of any of the accounts described in the second part of the first schedule to this Act, and all dividends which may then be or thereafter become due on such stock.

Indemnity  
out of Con-  
solidated  
Fund to  
suits of  
Court of  
Chancery.

5. After the commencement of this Act the Consolidated Fund shall, to the same extent as the stock and cash so transferred, be liable to make good to the suitors of the Court of Chancery the debts which at the commencement of this Act may be due to them in cash from the Court of Chancery in manner stated in the first part of the first schedule to this Act, and the Treasury shall in manner provided by this Act cause the sums required for the payment of such debts to be issued out of the Consolidated Fund.

Deficiency  
and excess of  
cash balance  
to credit of  
Accountant  
General.

6. Whenever the Lord Chancellor certifies in writing to the Treasury that the cash balance for the time being standing at the Bank of England to the credit of the Accountant-General of the Court of Chancery is less than three hundred thousand pounds, or such other sum as may be from time to time fixed by the Lord Chancellor, with the concurrence of the Treasury (regard being had to the amount required for carrying on the business of the office of the Accountant-General, and to the proper remuneration of the Bank of England), the Treasury shall forthwith cause to be paid into the Bank of England to the credit and with the privity of the said Accountant-General to be applied by him as part of the common and general cash of the suitors of the said Court, such sum out of the growing produce of the Consolidated Fund as may be required to make up the said cash balance to the sum of five hundred thousand pounds, or such other sum as may from time to time be fixed in manner aforesaid, and the liability of the Consolidated Fund under this Act shall be diminished by the amount of the sum so paid.

Whenever the said cash balance exceeds the sum of five hundred thousand pounds, or such other sum as may be fixed in manner aforesaid, the Governor and Company of the Bank of England shall, upon an order of the Lord Chancellor (to be made on the written requisition of the Treasury), and without any draft from the Accountant-General, or any act to be done by him, transfer such excess, or such part thereof as may be specified in the order, to the account of the Commissioners for the Reduction of the National Debt, and on such transfer being made the Consolidated Fund shall be further liable to the extent of any sum so transferred to make good to the suitors of the Court of Chancery any sum of cash due from the Court to them.

The said Accountant-General shall keep an account in his books showing the amount of the debts due from the Consolidated Fund to the suitors of the Court in respect of all sums of stock and cash transferred to the said Commissioners under this Act.

As to un-  
claimed  
dividends  
under sect.  
8, of 16 and  
17 Vict., c 98

7. Where the Lord Chancellor, in pursuance of section three of the Act of the Session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter ninety-eight, "For the further relief of the Suitors of the High Court of Chancery," makes an order for carrying any dividends or cash to the credit of "The Suitors' Unclaimed Dividend Account," the dividends and cash so carried over shall be paid into the receipt of Her Majesty's Exchequer and carried to the Consolidated Fund. On any order made by the Court,

under section two of the same Act, for paying to a suitor any dividends or cash so carried over, the Treasury shall, if required in writing by the Lord Chancellor, out of the growing produce of the Consolidated Fund, pay the same into the Bank with the privy of the Accountant-General of the Court of Chancery to the credit of the account from which such dividends were carried.

8. After the commencement of this Act the rent of any of the Master's Offices in Southampton-buildings, Chancery-lane, all brokerage payable by the broker of the Court of Chancery to the credit of the Sutors' Fee Fund, and all sums for rent received by the Solicitor to the Sutors' Fund, and payable by him to the credit of any of the accounts or funds mentioned in part two of the first schedule to this Act, and all moneys which, but for the passing of this Act, would be payable to the credit of any of the said accounts or funds, shall be paid into the receipt of Her Majesty's Exchequer at such times and in such manner as the Treasury may direct, and shall be carried to the Consolidated Fund.

7, 8, 9.  
10, 11

Income of  
Court of  
Chancery to  
go to Con-  
solidated  
Fund.

#### *Court of Bankruptcy.*

9. As soon as may be after the commencement of this Act the Governor and Company of the Bank of England shall, upon an order of the Lord Chancellor to be made in that behalf, and without any draft from the Accountant in Bankruptcy, or act done by him, transfer to the account of the Commissioners for the Reduction of the National Debt all sums of stock and cash which on the commencement of this Act may be standing in the books of the Bank of England in the name of the Accountant in Bankruptcy to the credit of any of the accounts described in the second part of the second schedule to this Act, and all dividends which may then be or thereafter become due on such stock.

Transfer of  
stock and  
cash to  
National  
Debt Com-  
missioners.

10. After the commencement of this Act the Consolidated Fund shall be liable to make good the debts due in cash from the Court of Bankruptcy in respect of the estates of bankrupts, in manner stated in the first part of the second schedule to this Act, and the debts due in cash from the late Court for the Relief of Insolvent Debtors in England in respect of Estates of Insolvent Debtors, in manner stated in the first part of the same schedule, and the Treasury shall in manner provided by this Act cause the sums required for the payment of such debts to be issued out of the Consolidated Fund.

Indemnity  
out of Con-  
solidated  
Fund to  
sutors of  
Court of  
Bankruptcy.

11. Whenever the Lord Chancellor certifies to the Treasury that the cash balance for the time being standing at the Bank of England to the credit of the Accountant in Bankruptcy, is less than fifty thousand pounds, or such other sum as may from time to time be fixed by the Lord Chancellor, with the concurrence of the Treasury, (regard being had to the amount required for carrying on the business of the office of the Accountant and to the proper remuneration of the Bank of England), the Treasury shall forthwith cause to be paid into the Bank of England to the credit of the Accountant to be applied by him as part of such cash balance, such sum out of the growing produce of the Consolidated Fund as may be required to make up the said cash balance to the sum of one hundred thousand pounds, or such other sum as may from time to time be fixed in manner aforesaid.

Deficiency  
and excess of  
cash balance  
to credit of  
Accountant  
in Bank-  
ruptcy.

Whenever the said cash balance exceed the sum of one hundred thousand pounds, or such other sum as may from time to time be fixed in manner aforesaid, the Governor and Company of the Bank of England shall, on an order of the Lord Chancellor, to be made on the written requisition of the Treasury, and without any draft from the Accountant, or act done by him, transfer such excess, or such part thereof as may be specified in the order, to the account of the Commissioners for the Reduction of the National Debt, and on such transfer being made the Consolidated Fund shall be further liable to the extent of the sum so paid to make good any sum of

§ 11, 12, 13, cash due from the Court of Bankruptcy in respect of estates of  
14 bankrupts and insolvents.

If under any Act passed in the present Session any of the duties previously performed by the Accountant in Bankruptcy are transferred to any other officer, the provisions of this section shall apply in the same manner as if they had been separately enacted with respect to such officer and his office and the duties to be performed by him, and such officer had been named herein instead of the said Accountant.

Salaries of  
Judges  
charged on  
Consolidated Fund.

Compensa-  
tions, pen-  
sions,  
salaries, &c.,  
charged on  
annual votes

*Salaries, Pensions, &c.*

12. After the commencement of this Act the salaries and pensions of the judges mentioned in the first parts of the third and fourth schedules to this Act shall be paid out of the Consolidated Fund.

13. After the commencement of this Act all compensations, pensions, retiring annuities, and superannuation allowances, at that date charged on any of the stock or cash standing to any of the accounts mentioned in the first and second schedules to this Act, or on the interest of any such stock, and the salaries, charges, and payments described in the second parts of the third and fourth schedules to this Act, and the salaries of and all pensions and superannuation allowances which may be granted to existing and future officers, clerks, and persons employed in the Court of Chancery or the Court of Bankruptcy, and the expenses and contingencies of those Courts and of the offices therein, and all other sums payable under any Act relating to such Courts, out of any of the stock and cash transferred under this Act, or the interest of such stock, including sums payable in pursuance of section sixteen of The Courts of Justice Building Act, 1865 (which relates to the purchase of compensation allowances), and also all arrears of such compensations, pensions, annuities, allowances, salaries, charges, and payments accrued before the commencement of this Act, shall be paid out of moneys provided by Parliament for the purpose.

All compensations, pensions, annuities, allowances, and salaries payable under this section shall be deemed to accrue from day to day, but shall be payable on such days as the Treasury may from time to time appoint.

If the moneys provided by Parliament are at any time insufficient for the purposes mentioned in this section, the Consolidated Fund shall be liable to make good such deficiency to the same extent to which the stock and cash, and the interest of such stock, transferred under this Act, or the income thereof, are liable at the commencement of this Act.

Nothing in this Act shall deprive any person who at the commencement of this Act enjoys any compensation, pension, retiring annuity, superannuation allowance, or salary mentioned in this section, of his right to continue to receive the same compensation, pension, retiring annuity, superannuation allowance, or salary, or of any right he may have to receive any progressive or prospective increase of salary or to obtain any promotion or succession, or any pension, retiring annuity, or superannuation allowance, and nothing in this Act shall affect or diminish any such right.

*Officers of Court.*

Appoint-  
ment of  
Officers.

14. The Treasury may from time to time, by order made with the concurrence of the Lord Chancellor, and also with the concurrence of the Master of the Rolls in the case of officers who are appointed or whose salaries are fixed by the Master of the Rolls, either solely or jointly with the Lord Chancellor, and with the concurrence of the Judge of the Court of Admiralty in the case of the officers of that Court, increase or diminish the number

of officers in the Courts of Chancery, Bankruptcy, and Admiralty, § 14, 15, 16 and the amounts of the salaries of such officers, and determine the conditions on which they are to hold their offices, and regulate the expenses and contingencies incurred in respect of the said Courts or the officers belonging thereto.

Any officer appointed after the commencement of this Act shall take his office subject to any order that may thereafter be made under this section in relation to the abolition or modification of his office, but no order made under this section shall, without his consent, apply to any officer holding office at the date of the commencement of this Act, and when the conditions on which any officer is to hold his office, and the salary to be paid to him, have been determined by any order under this section for the time being in force, no subsequent order under this section shall apply to such officer without his consent.

Any order made under this section shall be laid before both Houses of Parliament within fourteen days after it is made, if Parliament be then sitting, or if not, within fourteen days after the commencement of the next Session. It shall also be published in the London Gazette, and when so published shall be of the same force as if it were enacted in this Act, but subject to being varied or repealed from time to time by other orders made in like manner under this Act, and any enactment inconsistent with such order shall be repealed from and after the date of any such publication.

The term "Officer" in this section means all officers, clerks, messengers, and persons who are mentioned in the second parts of the third and fourth schedules to this Act, or are for the time being employed in the said Courts of Chancery, Bankruptcy, and Admiralty, or any of them, or the offices connected therewith.

#### *Buildings.*

15. The building in Basinghall-street, in the City of London, known as the Court of Bankruptcy, and the buildings in Portugal-street, Lincoln's-inn-fields, formerly known as the Court for Relief of Insolvent Debtors, (and occupied at the commencement of this Act by the officers of that Court, and by the Land Registry and the Courts of Justice Commission), shall, with the sites thereof, continue vested in the Commissioners of Her Majesty's Works and Public Buildings, and shall be appropriated as the Lord Chancellor, with the concurrence of the Treasury, from time to time directs.

On the commencement of this Act all the rights and interest of the District Commissioners in the buildings then used for the District Courts of Bankruptcy, and in all other buildings vested in the District Commissioners as such, and in the sites thereof, and in all furniture and effects belonging to the District Courts, and the offices thereof, shall be transferred to and vest in the Commissioners of Her Majesty's Works and Public Buildings, and the same shall be appropriated as the Lord Chancellor, with the concurrence of the Treasury, from time to time directs.

#### *Fees.*

16. After the commencement of this Act the Lord Chancellor, with the advice and consent of the Lords Justices of Appeal, Master of the Rolls, and Vice-Chancellors, or any three of them, and with the concurrence of the Treasury, may, from time to time by order increase, reduce, or abolish all or any of the existing fees and percentages (including the per-centage on estates of lunatics), and appoint new fees to be taken in relation to proceedings in the Court of Chancery, or in any of the offices mentioned in the third schedule to this Act.

Alteration of fees in Court of Chancery.

Until any such order is made the fees existing at the commencement of this Act shall continue to be taken.

§ 17, 18, 19,  
20, 21, 22,  
23, 24

Fees in  
Court of  
Admiralty.

Fees in  
Court of  
Bankruptcy.

Fees to be  
taken by  
stamps.

Stamp to be  
impressed or  
adhesive.

General  
rules to be  
made by  
Treasury.

Documents  
not properly  
stamped to  
be invalid.

Receipts  
from stamps  
to be paid to  
Consolidated Fund.

Annual  
account and  
expenditure  
of Courts of  
Chancery  
and Bank-  
ruptcy.

17. After the commencement of this Act, the Judge of the Court of Admiralty may from time to time by order, with the concurrence of the Treasury, increase, reduce, or abolish all or any of the existing fees, and appoint new fees to be taken in relation to proceedings in the Court of Admiralty.

Until any such order is made the fees existing at the commencement of this Act shall continue to be taken.

18. After the commencement of this Act the Lord Chancellor, with the concurrence of the Treasury, may from time to time by order, increase, reduce, or abolish all or any of the existing fees, and appoint new fees to be taken in relation to proceedings in the Court of Bankruptcy.

Until any such order is made the fees existing at the commencement of this Act shall continue to be taken.

19. After the commencement of this Act all fees whatever, or payments in the nature or lieu of fees, for the time being payable in the Courts of Chancery, Admiralty, and Bankruptcy, or any of the offices therein, including the per centage payable out of estates of lunatics, shall, except so far as the Lord Chancellor may from time to time otherwise by order direct, be taken by means of stamps, and if taken in money in pursuance of any such order shall be paid into the receipt of Her Majesty's Exchequer, and be carried to the Consolidated Fund.

20. All or any stamps to be used under this Act shall be impressed or adhesive, as the Treasury from time to time direct.

21. The Treasury, with the concurrence of the Lord Chancellor, or, in the case of the Court of Admiralty, of the Judge of that Court, may from time to time make such rules as seem fit for regulating the use of stamps under this Act, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps and for insuring the proper cancellation of adhesive stamps and keeping accounts of such stamps.

22. Any document which ought to bear a stamp under this Act shall not be of any validity unless and until it is properly stamped; but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or a Judge of one of the said Courts may, if he thinks fit, order that the same be stamped as in such order may be directed, and on such document being stamped accordingly the same and every proceeding relative thereto shall be as valid as if such document had been properly stamped in the first instance.

23. The Commissioners of Inland Revenue shall keep a separate account of all money received in respect of stamps under this Act; and, subject to the deduction of any expenses incurred by those Commissioners in the execution of this Act, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.

24. The Treasury shall cause to be prepared annually (with respect to the Court of Chancery and the Court of Bankruptcy separately), an account for the year ending the thirty-first of March, showing on the one side the following receipts:

1. The dividends or interest which would have arisen from the stock transferred to the Commissioners for the Reduction of the National Debt under this Act, and from the stock and securities purchased with cash so transferred, if such stock and securities were not cancelled;
2. All unclaimed dividends, rents, brokerage, and other sums paid into the receipt of Her Majesty's Exchequer under this Act in respect of the said Courts respectively;
- 3.—The amount received, after deducting the expenses, in respect of fees and per-centages taken in relation to proceedings in the said Courts respectively, or in any of the offices thereof;



and showing on the other side the expenditure during such year for compensations, pensions, retiring annuities, superannuation allowances, salaries, charges, expenses, and payments incurred in respect of the said Courts respectively.

\$ 24, 26,  
26, 27, 28,  
29, 30, 31,  
32

Where any sum has been paid in pursuance of this Act out of the growing produce of the Consolidated Fund to the credit of the Accountant-General of the Court of Chancery, or the Accountant in Bankruptcy or other officer, such allowance shall be made in the said accounts as if on the day of such payment an amount of the Three Per Centum Consolidated Bank Annuities transferred under this Act, had been sold sufficient to raise the sum so paid.

The term "Court of Bankruptcy" in this section means the Court as defined by this Act, or as constituted by any Act of the present Session.

25. So much of the Courts of Law Fees Act, 1867, as relates to the account with respect to the High Court of Admiralty, shall be construed as if the fees therein referred to were the fees authorized under this Act.

Application of sect. 3 of 30 and 31 Vict., c. 122, to Admiralty fees.

26. Each of the said annual accounts prepared in pursuance of this Act shall show the deficit or surplus of receipts as compared with expenditure, and the second of each such yearly accounts and every subsequent account shall show the items for two consecutive years, and the increase or decrease of any item in the second of these years as compared with the first.

Accounts to show surplus and deficit and comparison for two years.

The first of the said annual accounts shall be made up for the period between the commencement of this Act and the thirty-first day of March, one thousand eight hundred and seventy.

27. Each of the said annual accounts prepared in pursuance of this Act shall be laid before both Houses of Parliament within one month after the thirty-first day of March in each year, if Parliament is then sitting, or if not, then within one month after the next meeting of Parliament.

Accounts to be laid before Houses of Parliament.

28. If in any year there is a deficit on either of the annual accounts as aforesaid, the amount of such deficit shall be debited to the same account in the next following year; provided that no such deficit shall be debited to any account unless and until there has been in some year a surplus on the same account, and after there has been such a surplus the deficit (if any) of every subsequent year shall be so debited, but not that of any year previous to that in which there first was a surplus.

Provision for deficit on accounts.

#### *Miscellaneous.*

29. The provisions of this Act with respect to the Court of Bankruptcy, shall be subject to any provisions made with respect to that Court by any Act passed in the present Session.

Saving for Act of present session.

30. As soon as any sums of stock have been transferred in pursuance of this Act to the Commissioners for the Reduction of the National Debt, the Treasury shall by warrant direct the Governor and Company of the Bank of England to cancel such sums in the books of the said Governor and Company. The Commissioners for the Reduction of the National Debt shall apply all cash transferred to them in pursuance of this Act in reduction of the National Debt in the same manner as if such cash were a surplus of the annual revenue.

Application of stock and cash transferred to Commissioners for Reduction of National Debt.

31. The Treasury shall cause to be kept by such persons and in such manner as they may from time to time direct, accounts of the liability of the Consolidated Fund under this Act, and such accounts as may be necessary in order to admit of the preparation of the annual accounts required by this Act in respect of the Courts of Chancery and Bankruptcy.

Accounts.

32. The Lord Chancellor may from time to time make such orders as he may think necessary for carrying this Act into effect.

Orders by Lord Chancellor.

- § 33, 34**      33. The Treasury from time to time may make such rules and regulations and issue such order concerning the form and mode of transmission of certificates and vouchers, and otherwise for checking, controlling, and regulating the payment of the charges transferred by this Act to the Consolidated Fund or moneys provided by Parliament, and for enforcing and regulating the accounting for and due payment of the stock and moneys to be transferred to the Commissioners for the Reduction of the National Debt, or to be carried to the Consolidated Fund under this Act, as they may think fit; and a return of any such rules and regulations which may be issued by the Treasury shall be laid before both Houses of Parliament within six weeks from the date of the issue thereof, if Parliament be then sitting, and if it be not then sitting, within six weeks from the day of the next ensuing meeting of Parliament.
- Treasury  
may make  
regulations.
34. The enactments described in the fifth schedule to this Act, are hereby repealed.
- Repeal of  
Acts as in  
5th Schedule
- Provided that this repeal shall not affect anything already done, or suffered, or any right acquired or order made, under the said enactments or any of them.
- Nor shall this repeal affect the right of any person to receive such salary, compensation, retiring annuity, pension, superannuation allowance, or progressive or prospective increase of salary, or to obtain such promotion or succession, or pension, retiring annuity, or superannuation allowance as he might have received or obtained if this repeal had not been enacted.

## FIRST SCHEDULE.

## COURT OF CHANCERY.

## Funds standing in Name of Accountant General.

## PART I.

## Belonging to suitors, and not transferred by Act.

Money and stock as standing on the 1st of October, 1868.	Title of credit to which moneys and stock stand.	To whom belonging, and charges thereon.	Origin of funds, and remarks.	Acts.
£56,233 314 1s. 1d. stock.	Accounts of various suitors kept causewise.	Principal and interest belongs to suitors.		
£2,764,744 1s. 10d. book debt due in cash from the Court of Chancery to suitors.	Accounts of various suitors kept causewise.	Belongs to suitors, being cash which they have not asked to have invested; no interest thereon is payable to suitors thereon.		
£383,157 8s. 10d. cash.	Book debt due from Court of Chancery to suitors of amount paid in by them, estimated as equal to value at commencement of this Act of stock on this account mentioned in Part II.	Belongs chiefly to suitors, being cash paid by them on appealing from courts of first instance; no interest is payable to suitors thereon.		15 and 16 Vict. c. 87, s. 41.
£3,432 13s. 8d. cash.				

## FIRST SCHEDULE—continued.

## PART II.

Belonging to Court, and transferred by Act.

FUND (A.) called in this Act "The Sutors Fund."

Moneys and stock as standing on the 1st of October, 1888.	Title of credit to which moneys and stock stand.	To whom belonging, and charges thereon.	Origin of funds, and remarks.	Acts.
Bank £3 per cent. annuities. £1,588,215 17s. 6d. Reduced annuities. £1,571,894 3s. 6d. £3,160,110 1s. stock.	"Account of moneys placed out for the benefit and better security of the suitors of the High Court of Chancery."	Principal belongs to Court, subject to the liability to make good to the suitors, without interest, the £2,761,744 1s. 10d. book debt due to them mentioned in Part I.	Arose from the investment by the Court in pursuance of Acts of Parliament as a banker at its own risk of the £2,761,744 1s. 10d. described as a book debt in Part I.: some portion of which is unclaimed money, and will probably remain so. The price at which this stock must be sold to realize the above sum is 88½.	See Acts in fifth schedule.
£14,652 9s. 5d. cash.	"Account of interest arising from moneys placed out for the benefit and better security of the suitors of the High Court of Chancery."	Belongs to Court; is charged with salaries and pensions of Accountant General, his clerks, and other officers. See below on Fund C, and third schedule.	Is interest on stock of Fund (A.) and rent of masters' offices.	

## FUND (B.) called in this Act "The Surplus Interest Fund."

Reduced annuities, £352,976 8s. 7d. New 3 per cent. annuities, £24 6s. East India

"Account of securities purchased with surplus interest, arising from securities carried to an account of moneys

Principal belongs to the Court, subject to liability to make good by sale of principal and interest any deficiency Court after paying expenses.

15 Vict. c. 6.  
16 and 16 Vict.  
of the  
c. 80, s. 40.

## FIRST SCHEDULE—continued.

## FUND (B.)—continued.

Moneys and stock as standing on the 1st of October, 1868.	Title of credit to which moneys and stock stand.	To whom belonging, and charges thereon.	Origin of funds, and remarks.	Acta.
<p>stock, 4s. 11d.</p> <p>£353,000 19s. 6d. stock.</p>	<p>placed out for the benefit and better security of the suitors of the High Court of Chancery."</p>	<p>in Fund (A.) to meet the £2,764,744 1s. 10d. book debt in Part I.</p>	<p>As the surplus of that interest is now carried to Fund (C.), this fund does not now increase.</p> <p>In 1865 the amount of this fund was £1,291,629 5s. 6d., of which £1,000,000 was authorized to be sold by "The Courts of Justice Building Act, 1865."</p> <p>The Consolidated Fund was by that Act charged to the extent of £1,000,000 to meet any deficiency which this fund could be called upon to meet.</p>	
<p>£1,371 9s. 10d. cash.</p>	<p>"Account of interest arising from securities purchased with surplus interest arising from securities carried to an account of moneys placed out for the benefit and better security of the suitors of the High Court of Chancery."</p>	<p>Belongs to Court; is charged with certain salaries and with certain compensations in the nature of life annuities and other temporary charges. See third schedule.</p>	<p>Is interest on stock of Fund (B.)</p>	

FIRST SCHEDULE.—continued.  
FUND (C.) called in this Act "The Suitors Fee Fund."

Moneys and stock as standing on the 1st of October, 1888.	Title of credit to which moneys and stock stand.	To whom belonging, and charges thereon.	Origin of funds, and remarks.	Acts.
£217,108 7s. 1d. cash.	"The Suitors Fee Fund Account."	Belongs to Court. Charged with salaries and pensions of offices (except those charged on Funds (A.) and (B), and those of Lord Chancellor, and Judges, and certain officers of Lord Chancellor whose salaries are charged on Consolidated Fund), and expenses of Court, and compensations. See third schedule.	Is only a receipt and expenditure account. The surplus interest on Funds (A.) and (B.), and the interest on funds (D.) and (E.), and all fees and other revenues of the Court, and brokerage paid by broker of Court, are carried to this fund.	2 & 3 Will. 4, c. 122. 3 & 4 Will. 4, c. 84. 1 & 2 Vict. c. 54. 5 Vict. c. 5. 5 & 6 Vict. c. 10, s. 121. 15 & 16 Vict. c. 80, s. 51. 15 & 16 Vict. c. 87, ss. 18, 53. 16 & 17 Vict. c. 98.
£201,028 2s. 3d. Bank £3 per cent. annuities.	"Account of moneys placed out to provide for the officers of the High Court of Chancery."	Belongs to Court. Is liable to make good by sale of the principal, the charges on Fund (C.)	Arose from surplus of Fund (C.)	
£1,517 9s. 5d. Bank £3 per cent. annuities.	"Account of money arising from sale of Six Clerks Offices."	Belongs to Court.	Arose from sale of old Six Clerks Office.	14 Geo. 3, c. 43, s. 6 & 7, Vict. c. 103, s. 29.

## FIRST SCHEDULE—continued.

## FUND (F.)

Moneys and stock as standing on the 1st of October, 1868.	Title of credit to which moneys and stock stand.	To whom belonging, and charges thereon.	Origin of funds, and remarks.	Acta.
£10,000. Bank £3 per cent. annuities. £4,486 5s. cash.	"Appeal deposit account."	Belongs to Court. Is liable to make good debt to suitors as mentioned in Part I.	The stock represents the accumulated amount of deposits invested by registrars previously to the passing of 15 & 16 Vict. c 87. Cash arises from dividends on above stock.	15 & 16 Vict. c 87, s. 41.

## FUND (G.)

£4,550 13s. 9d. Bank £3 per cent. annuities.	Keeper or clerk of the Hanaper in Chancery.	Belongs to Court. Interest is payable in aid of revenues of Hanaper Office.	Accumulations from old six-penny duty on sealing writs, converted by order of Court in 1753.	
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## SECOND SCHEDULE.

## COURT OF BANKRUPTCY.

## Funds in Name of Accountant in Bankruptcy.

## PART I.

## Belonging to Suitors, and not transferred by Act.

Money and stock standing on the Ist of January, 1869.	Title of credit to which money and stock stand.	To whom belonging, and charges thereon.	Origin of fund, and remarks.	Acts.
£22,145 1s. stock. £103,100 Exchequer bill.	General account of bankrupts' estates.  Do. do.  Unclaimed dividend account.	Principal and interest the property of Bankrupts and insolvents estates.	Consists of securities the property of bankrupts and insolvents estates. Portions of the unemployed cash are, in pursuance of Act of Parliament, from time to time invested at the risk of the Court, but with a Parliamentary guarantee, and carried to Bankruptcy Fund Account.	5 & 6 WILL. 4. c. 20, s. 4. 6 & 7 WILL. 4. c. 27. 24 & 25 Vict. c. 134, ss. 127-8.
£1,691,663 9s. 3d. Book debt due from Court of Bankruptcy in respect of bankrupts and insolvents estates.		Belongs to bankrupts and insolvents estates, being cash paid in as part of bankrupts and insolvents estates to the credit of those estates which has not been invested on account of those estates.		
£37,510 8s. 4d. cash. £221,361 4s. 11d. Book debt due from Court of Bankruptcy to creditors of bankrupts.		No interest is payable thereon. Belongs to creditors or bankrupts, being cash due to creditors as dividends, or surplus from bankrupts estates. No interest is payable thereon.		
Book debt due from Court of Bankruptcy to suitors of Insolvent Debtors Court of amount of un-	Purposes of the 28th section of the Bankruptcy Act, 1861, account.	Belongs to suitors of late Insolvent Debtors Court. No interest is payable thereon.	Transferred to Bankruptcy Court in 1861, 24 & 25 Vict. c. 134, s. 20: consists mainly of unclaimed dividends and undivided surplus.	24 & 25 Vict. c. 134.



## SECOND SCHEDULE.—continued.

Money and stock standing on the 1st of January, 1869.	Title of credit to which money and stock stand.	To whom belonging, and charges thereon.	Origin of fund, and remarks.	Acts.
claimed dividends, and undivided surplus of insolvent estates estimated as equal to value at commencement of this Act of stock on this account mentioned in Part II.				

## PART II.

## Belonging to Court, and transferred by Act.

## FUND (A.)

£1,193,123 4s. stock.	The Bankruptcy Fund Account.	Principal and interest belongs to Court, subject to liability to make good to bankrupts and insolvents estates the £1,091,063 9s. 3d. book debt shown in Part I. in respect of the general account of bankrupts and insolvents estates.	Arises from certain investments by the Court as a banker at its own risk of cash belonging to bankrupts estates and of unclaimed dividends before 6th August, 1861. Interest carried to Chief Registrar's account. When the cash balances to the "General account of bankrupts estates" are too low, stock is sold from this account, and carried to that account.	5 & 6 Will. 4, c. 23, ss. 1, 6, 10, 14, 16, 20. 6 & 7 Will. 4, c. 27, ss. 1, 2, 12 & 13 Vict. c. 106, ss. 34, 55.
			Any deficiency in the fund to answer any such demands to	

## SECOND SCHEDULE.—continued.

## FUND (A).—continued.

Money and stock standing on the 1st January, 1869.	Title of credit to which moneys and stock stand.	To whom belonging, and charges thereon.	Origin of funds, and remarks.	Acts.
			be made good by Parliament, 5 & 6 Will. 4, c. 29, s. 20; 6 & 7 Will. 4, c. 27, s. 7, and 12 & 13 Vict. c. 106, s. 55.	

## FUND (B.)

£29,652 11s. 8d. cash.	Chief Registrar's Account.	Is the property of the Court. Charged with salaries, pensions, compensations, and incidental expenses of the Court, 24 & 25 Vict. c. 134, ss. 33-36.	Formed chiefly from fees, but 1 & 2 Will. 4, c. 57, ss. 45, 46, 51, 52, 55, 48, 51, 52, 55, Vict. c. 106, s. 32, partly 5 & 6 Will. 4, from investments of the surplus cash of the Court, 7 & 8 Vict. c. 90, s. 49, and from interest of stock standing to the Bankruptcy Fund Account and unclaimed Dividend Account.	c. 57, ss. 45, 46, 51, 52, 55, 48, 51, 52, 55, Vict. c. 106, s. 32, partly 5 & 6 Will. 4, from investments of the surplus cash of the Court, 7 & 8 Vict. c. 90, s. 49, and from interest of stock standing to the Bankruptcy Fund Account and unclaimed Dividend Account.
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## FUND (C.)

£244,387 19s. 1d. stock Unclaimed Dividend Account.		Principal and interest the property of the Court. Liable to payment to creditors of the sum of £221,361 4s. 11d. cash described as a book debt in Part I., due from Court for	Formed of dividends due to creditors and unclaimed by them, and of undivided surplus of bankrupt estates invested by the Court as banker as its own risk.	c. 29 ss. 6, 7, 6 & 7 Will. 4, c. 27, s. 7, c. 27, s. 7, & 8, 12 & 13 Vict.
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£23,064 6s. 8d. cash.

SECOND SCHEDULE.—continued.  
FUND (C.)—continued.

Money and stock standing on the 1st of January, 1869.	Title of credit to which moneys and stock stand.	To whom belonging, and charges thereon.	Origin of funds, and remarks.	Acta.
		dividends or ordered to be distributed.	Interest carried to Chief Registrar's account.	c. 106, ss. 191—193. 24 & 25 Vict. c. 134, s. 184.
£115,911 7s. 11d. stock	Purposes of the 26th section of the Bankruptcy Act, 1861, account.	<p>FUND (D.)</p> <p>Principal and interest belong to the Court, transferred from Insolvent Debtors Court in 1861.</p> <p>Charged with payment of the sum in cash described as a book debt in Part I., due from Court to creditors or bankrupts in Insolvent Debtors Court in 1861, and of salaries of clerks and other matters mentioned in the 26th section of the Bankruptcy Act, 1861.</p>		
£3,296 7s. 3d. cash.			Formed of moneys and Government securities standing on the 11th October 1861 to the credit of the Account of the Commissioners of the Court for the Relief of Insolvent Debtors in England.	24 & 25 Vict. c. 134, s. 26.

## THIRD SCHEDULE.

## PART I.

## Salaries and Pensions charged on the Consolidated Fund.

Fund out of which Salaries are now payable.	Salaries.	Acts.
Consolidated Fund	Lord Chancellor. Lords Commissioners of the Great Seal. Lords Justices of Appeal. Master of the Rolls. Vice-Chancellors.	15 & 16 Vict. c. 87, s. 16.

## PART II.

## Salaries and Expenses of the Court of Chancery payable out of moneys provided by Parliament for the purpose.

Funds out of which Charges are now payable.	Charges, Expenses, and Contingencies of Offices.	Acts.
Lord Chancellor.		
Suitors Fee Fund	Salaries of principal secretary, gentleman of the chamber, purse bearer, train bearer, porter, and messenger to Great Seal, and messenger to Lord Chancellor when out of town.	3 & 4 Will. 4, c. 84. 15 & 16 Vict. c. 87, and orders of Court of Chancery.
Consolidated Fund	„ secretary of presentations and secretary of commissions.	3 & 4 Will. 4, c. 84. 3 & 4 Vict. c. 94. 15 & 16 Vict. c. 87, and orders of Court of Chancery.
Suitors Fee Fund	„ clerks to principal secretary.	3 & 4 Vict. c. 94.
Suitors Fund	„ ushers, tipstaves, persons to keep order in court, stokers, and court keepers.	50 Geo. 3, c. 164 (Local and Personal). 3 & 4 Vict. c. 94.
Surplus Interest Fund	„	3 & 4 Will. 4, c. 94.
Consolidated Fund	Expenses of office of clerk of presentations.	3 & 4 Will. 4, c. 84.
Suitors Fee Fund	Expenses and contingencies of the Court and of above officers.	15 & 16 Vict. c. 87, and orders of Court of Chancery.
Court of Appeal.		
Suitors Fund	Salaries of secretaries, clerks of the chamber, ushers, train bearers, and persons to keep order in court.	14 & 15 Vict. c. 83. 30 & 31 Vict. c. 87.
Surplus Interest Fund	„	„
Suitors Fee Fund	Expenses and contingencies of court.	15 & 16 Vict. c. 87, and orders of Court of Chancery.

## Master of the Rolls.

Fund out of which Charges are now payable.	Charges, Expenses, and Contingencies of Offices.	Acts.
Suitors Fee Fund	Salaries of chief secretary, secretary of causes, gentlemen of the chamber, train bearer, clerks, ushers, &c.	7 Will. 4 & 1 Vict. c. 46. 5 & 6 Vict. c. 103. 15 & 16 Vict. c. 87, and orders of Court of Chancery.
Consolidated Fund	Salaries of preacher and reader and clerk of Rolls Chapel, and expenses and contingencies of Rolls Chapel.	7 Will. 4 & 1 Vict. c. 46.
Suitors Fee Fund	Salaries of chief clerks „ junior clerks and additional junior clerks.	15 & 16 Vict. c. 80. 18 & 19 Vict. c. 134. 27 & 28 Vict. c. 15. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
Suitors Fund and Surplus Interest Fund.	„ assistant clerks	3 & 4 Vict. c. 94. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
Suitors Fee Fund	Expenses and contingencies of court and offices and chambers.	15 & 16 Vict. c. 87.

## Vice-Chancellors.

Suitors Fund and Surplus Interest Fund.	Salaries of secretaries, clerks of the chamber, ushers, train bearers, and porters of Vice-Chancellors.	53 Geo. 3, c. 24. 55 Geo. 3, c. 64. 5 Vict. c. 5. 15 & 16 Vict. c. 80. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
Suitors Fee Fund	Salaries of chief clerks	15 & 16 Vict. c. 80. 18 & 19 Vict. c. 134. 27 & 28 Vict. c. 15. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
Suitors Fund, Surplus Interest Fund, and Suitors Fee Fund.	Salaries of junior clerks, additional junior clerks, and assistant clerks. „ persons to keep order in courts. Expenses and contingencies of court and offices and chambers.	3 & 4 Vict. c. 94. 15 & 16 Vict. c. 80. 18 & 19 Vict. c. 134. 27 & 28 Vict. c. 15. 30 & 31 Vict. c. 87, and orders of Court of Chancery.

## Chancery Offices.

Suitors Fee Fund	Salaries, expenses, and contingencies of registrars and clerks, including clerks of entries and assistant clerks and bag-bearers.	3 & 4 Will. 4, c. 94. 3 & 4 Vict. c. 94. 5 Vict. c. 5. 14 & 15 Vict. c. 83. 18 & 19 Vict. c. 134. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
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## Chancery Offices.—continued.

Fund out of which Charges are now payable.	Charges, Expenses, and Contingencies of Offices.	Acts.
Suitors Fund, Surplus Interest Fund, and Suitors Fee Fund.	Salaries, expenses, and contingencies of Accountant General (including his salary as master), and of his officers.	12 Geo. 1, c. 32. 12 Geo. 2, c. 24. 4 Geo. 3, c. 32. 5 Geo. 3, c. 28. 9 Geo. 3, c. 19. 32 Geo. 3, c. 42. 46 Geo. 3, c. 123. 46 Geo. 3, c. 129. 55 Geo. 3, c. 64. 3 & 4 Vict. c. 94. 15 & 16 Vict. c. 87, and orders of Court of Chancery.
Suitors Fee Fund . . .	Salaries, expenses, and contingencies of examiners and clerks.	50 Geo. 3, c. clxiv. 15 & 16 Vict. c. 86. 16 & 17 Vict. c. 22.
Suitors Fee Fund . . .	Salaries, expenses, and contingencies of taxing masters and their clerks and messengers.	5 & 6 Vict. c. 103. 15 & 16 Vict. c. 87. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
Suitors Fee Fund . . .	Salaries, expenses, and contingencies of clerks of records and writs and their clerks, and master of reports and entries, and clerks of report office.	3 & 4 Will. 4, c. 94. 5 & 6 Vict. c. 103. 18 & 19 Vict. c. 134. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
Suitors Fee Fund . . .	Salaries, expenses, and contingencies of clerk of enrolments and clerks.	5 & 6 Vict. c. 103. 30 & 31 Vict. c. 87, and orders of Court of Chancery.
Suitors Fee Fund . . .	Salaries, expenses, and contingencies of clerk of petty bag and his clerk.	12 & 13 Vict. c. 109.
Suitors Fund and Surplus Interest Fund.	Salary, expenses, and contingencies of solicitor to suitors fund, including costs of contempt.	23 & 24 Vict. c. 149, and orders of Court of Chancery.
Suitors Fee Fund . . .	Salary of surveyor to court.	Order of Court of Chancery.
" " . . .	Salary of stockbroker of court.	15 & 16 Vict. c. 87, and orders of Court of Chancery.
" " . . .	Keeper of the records of late masters in ordinary.	Orders of Court of Chancery
Masters in Lunacy, Registrar in Lunacy, Visitors of Lunatics.		
Suitors Fee Fund . . .	Salaries of masters in lunacy and their clerks.	5 & 6 Vict. c. 84. 8 & 9 Vict. c. 100. 16 & 17 Vict. c. 70, and orders of Court of Chancery.
" " . . .	" registrar in lunacy and clerks.	16 & 17 Vict. c. 70.
" " . . .	" visitors of lunatics, and secretary and clerks to visitors.	25 & 26 Vict. c. 86, and orders of Court of Chancery.
" " . . .	Expenses and contingencies of office.	

## Commissioners in Lunacy.

Funds out of which Charges are now payable.	Charges, Expenses, and Contingencies of Offices.	Acts.
Consolidated Fund . .	Balance required to meet salaries, costs, charges, and expenses. Clerk of the Crown.	3 & 4 Will. 4. c. 84. 8 & 9 Vict. c. 100.
Fees of office and dividend on Fund (G.) in second schedule.	Salary of and expenses and contingencies of office of clerk of the Crown in Chancery.	3 & 4 Will. 4, c. 84. 15 & 16 Vict. c. 87.

## FOURTH SCHEDULE.

## PART I.

Salaries and Pensions of the Court of Bankruptcy charged on Consolidated Fund.

Fund out of which Salaries are now payable.	Salaries and Pensions.	Acts.
Chief Registrar's Account.	Commissioners of the Court of Bankruptcy in London	12 & 13 Vict. c. 106, s. 56.
" "	District Commissioners of the Court of Bankruptcy in the country.	24 & 25 Vict. c. 134, s. 33.

## PART II.

Salaries and Expenses of the Court of Bankruptcy payable out of Moneys to be provided by Parliament for the purpose.

Fund out of which Charges are now payable.	Charges, Expenses, and Contingencies of Office.	Acts.
Chief Registrar's Account.	Salaries and pensions of Chief Registrar, Registrars Accountant, Taxing Master, Official Assignees, Clerks, Ushers, Messengers, and other officers and clerks, and the expenses and contingencies of the London and District Courts of Bankruptcy and costs of prosecutions of bankrupts.	5 & 6 Vict. c. 122. 12 & 13 Vict. c. 106. 24 & 25 Vict. c. 134.
Chief Registrar's Account, the amount being repaid to that Fund out of moneys provided by Parliament.	Compensations and pensions to holders of abolished offices and former commissioners of bankrupts.	24 & 25 Vict. c. 134, s. 35.
Chief Registrar's Account, the amount being partly repaid to that Fund out of moneys to be provided by Parliament.	Salaries, expenses, and contingencies of officers of late Court for Relief of Insolvent Debtors.	24 & 25 Vict. c. 134, s. 30.

## FIFTH SCHEDULE.

A description of part of an Act is inclusive of the words and sections first or last mentioned or referred to as forming the beginning or end of the portion described.

Date of Act.	Title of Act.
12 Geo. 2. c. 24.	An Act to empower the High Court of Chancery to lay out upon proper securities any moneys not exceeding a sum therein limited out of the common and general cash in the Bank of England belonging to the suitors of the said court, for the ease of the said suitors, by applying the interest arising therefrom for answering the charges of the office of the Accountant General of the said court.
4 Geo. 3. c. 32.	An Act to empower the High Court of Chancery to lay out upon proper securities a further sum of money not exceeding a sum therein limited out of the common and general cash in the Bank of England belonging to the suitors of the said court, and for applying the interest arising therefrom towards answering the charges of the office of the Accountant General of the said Court.
5 Geo. 3. c. 23.	An Act to empower the High Court of Chancery to lay out upon government securities a sum of money therein mentioned out of the common and general cash in the Bank of England belonging to the suitors of the said court, and to apply the interest arising therefrom towards augmenting the income of the masters of the said court.
9 Geo. 3. c. 19.	An Act to empower the High Court of Chancery to lay out upon government securities a further sum of money, not exceeding a sum therein limited, out of the common and general cash in the Bank of England belonging to the suitors of the said court, and to apply the interest arising therefrom towards answering the charges of the office of the Accountant General of the said court.
14 Geo. 3. c. 43.	An Act for rebuilding the office of the six clerks of the King's Court of Chancery, and for erecting offices for the Register and Accountant General of the said court for the better preserving the records, decrees, orders, and books of account kept in such offices.
32 Geo. 3. c. 42, in part.	An Act to empower the High Court of Chancery to lay out a further sum of the suitors money upon proper securities, and for applying the interest towards discharging the expenses of the office of the Accountant General, and for building offices for the masters in ordinary in Chancery, and a public office for the suitors of the said court, and offices for the secretaries of bankrupts and lunatics, and for building repositories for securing the title deeds of the suitors of the said court, and the records and proceedings of the commissioners of bankrupts and lunatics.
46 Geo. 3. c. 128.	An Act for making provision for such masters in ordinary of the High Court of Chancery as from age or infirmity shall be desirous of resigning their offices with the approbation of the said court, and for augmenting the income of the masters in ordinary of the said court.

In part,  
namely:  
except  
section  
eight.



Date of Act.	Title of Act.
46 Geo. 3. c. 129.	An Act to provide additional salaries to the present clerks in the office of the Accountant General of the High Court of Chancery, and to provide additional clerks for the said office, with salaries; and to make other payments in respect of the said office.
50 Geo. 3. c. clix. in part.	<p>An Act for building certain offices for the examiners, cursitors, clerk of the Crown, and clerks of the petty bag of the High Court of Chancery; and for making certain regulations in the Examiner's office of the said court; and for making provision for such of the examiners, deputy examiners, and clerks as, from length of service, or from age or infirmity, are or shall be incapacitated from the due execution of their offices; and for making provision for other officers of the said court; and for making other payments in respect of the said offices.</p> <p>In part, namely:—sections one, three, eight, fifteen to nineteen, twenty-one, and twenty-five to twenty-eight.</p>
53 Geo. 3. c. 24. in part.	An Act to facilitate the administration of justice.
2 & 3 Will. 4. c. 122. in part.	<p>An Act for making provision for the Lord High Chancellor of England in lieu of fees heretofore received by him.</p> <p>In part, namely:—sections seven to twelve.</p>
3 & 4 Will. 4. c. 94. in part.	<p>An Act for the regulation of the proceedings and practice of certain offices of the High Court of Chancery in England.</p> <p>In part, namely:—sections thirty-five to thirty-eight and forty-three to forty-seven.</p>
5 & 6 Will. 4. c. 29. in part.	<p>An Act for investing in government securities a portion of the cash lying unemployed in the Bank of England belonging to bankrupt's estates, and applying the interest thereon in discharge of the expenses of the Court of Bankruptcy, and for the relief of the suitors in the said court, and for removing doubts as to the extent of the powers of the Court of Review and of the Sub-division Courts.</p> <p>In part, namely:—sections one to four, nine to eleven, fourteen to seventeen, nineteen and twenty.</p>
6 & 7 Will. 4. c. 27.	An Act for investing in government securities further portions of the cash lying unemployed in the Bank of England belonging to bankrupt's estates.
7 Will. 4. & 1 Vict. c. 46. in part.	<p>An Act to vest the Rolls Estate in Her Majesty, and to provide for the future payment of the salary of the Master of the Rolls, and the expenses of the Rolls Chapel.</p> <p>In part, namely:—sections six to nine and eleven to thirteen.</p>

Date of Act.	Title of Act.
1 & 2 Vict. c. 54.	An Act for making further investments from the money of the suitors of the Court of Chancery and the Court of Exchequer, and for providing for the payment into court of fees received by certain officers of the Lord Chancellor.
3 & 4 Vict. c. 66. in part.	An Act to make provision for the judge, registrar, and marshal of the High Court of Admiralty of England.
3 & 4 Vict. c. 94.	An Act for facilitating the administration of justice in the Court of Chancery.
5 Vict. c. 5. in part.	An Act to make further provision for the administration of justice.
5 & 6 Vict. c. 84. in part.	An Act to alter and amend the practice and course of proceeding under commissions in the nature of writs de lunatico inquirendo.
5 & 6 Vict. c. 103. in part.	An Act for abolishing certain offices of the High Court of Chancery in England.
8 and 9 Vict. c. 100. in part.	An Act for the regulation of the care and treatment of lunatics.
12 & 13 Vict. c. 109. in part.	An Act to amend an Act to regulate certain offices in the petty bag in the High Court of Chancery, the practice of the common law side of that court, and the enrolment office of the said court.
14 & 15 Vict. c. 83. in part.	An Act to improve the administration of justice in the Court of Chancery and the Judicial Committee of the Privy Council.
15 & 16 Vict. c. 80. in part.	An Act to abolish the office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient dispatch of business in the said court.
15 & 16 Vict. c. 87. in part.	An Act for the relief of the suitors in the High Court of Chancery.

In part, namely:—sections eight and thirteen to sixteen.

In part, namely:—sections two, three, and four.

In part, namely:—sections eleven, twelve, and fifty-eight to sixty-three.

In part, namely:—except section ten.

In part, namely:—sections twenty, twenty-one to twenty-seven, and section twenty-nine from “and further that all dividends” to end of section.

In part, namely:—sections thirty-five, ninety-seven, and ninety-eight.

In part, namely:—sections six to eight, twenty-one, and twenty-three.

In part, namely:—section nineteen.

In part, namely:—sections six, forty-eight, and forty-nine.

In part, namely:—sections two, six to thirteen, forty-eight, fifty-one, fifty-three, fifty-four, and so much of section fifty-two as relates to the fund out of which the sums are to be payable

Date of Act.	Title of Act.
16 & 17 Vict. c. 70. in part.	An Act for the regulation of proceedings under commissioners of lunacy, and the consolidation and amendment of the Acts respecting lunatics so found by inquisition on their estates. } In part, namely;—sections twenty-five, thirty, and thirty-one
16 & 17 Vict. c. 98. in part.	An Act for the relief of the suitors of the High Court of Chancery. } In part, namely;—section two from “out of the fund” to the end of the section, and section four.
17 & 18 Vict. c. 78. in part.	An Act to appoint persons to administer oaths, and to substitute stamps in lieu of fees, and for other purposes, in the High Court of Admiralty of England. } In part, namely;—sections fourteen to twenty-one, both inclusive.
18 & 19 Vict. c. 134. in part.	An Act to make further provision for the more speedy and efficient dispatch of business in the High Court of Chancery, and to vest in the Lord Chancellor the ground and buildings of the said Court, situate in Southampton Buildings, Chancery Lane, with powers of leasing and sale thereof. } In part, namely;—section fourteen, and tions seventeen to twenty-two.
25 & 26 Vict. c. 86. in part.	The Lunacy Regulation Act, 1862. } Section twenty-seven.

## JUDICIAL COMMITTEE ACT, 1871,

*34 and 35 Vict. cap. 91,*[~~187~~ This statute is referred to in sec. 6, page 4.]

An Act to make further provision for the despatch of business by the Judicial Committee of the Privy Council.

[21st August 1871.]

Whereas it is expedient to make further provision for the despatch of business by the Judicial Committee of the Privy Council :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

## § 1

Appoint-  
ment of ad-  
ditional  
members of  
the Judicial  
Committee.

1. Her Majesty may within twelve months after the passing of this Act, by warrant under her sign manual, appoint four persons qualified as in this Act mentioned, whether already members of such Judicial Committee or not, to act as members of the Judicial Committee of the Privy Council under the provisions of this Act, and may from time to time within two years after the passing of this Act by a like warrant fill any vacancies occasioned by death or otherwise in the offices of the persons so appointed.

Any persons appointed to act under the provisions of this Act as members of the said Judicial Committee must be specially qualified as follows ; that is to say, must at the date of their appointment be or have been judges of one of Her Majesty's Superior Courts at Westminster, or a Chief Justice of the High Court of Judicature at Fort William in Bengal, or Madras or Bombay, or of the late Supreme Court of Judicature at Fort William in Bengal.

Where any person appointed in pursuance of the provisions herein contained to act as a member of the said Judicial Committee is at the date of his appointment a judge as aforesaid, he shall on his appointment vacate his office as such judge, but as to pension shall remain in the same position as if no such appointment had been made ; and service as a member of the Judicial Committee shall for the purposes of pension be reckoned as service in the Court from which he was removed.

Whereas doubts have been entertained as to the meaning and effects of the provisions of the Court of Probate Act and the Divorce Act as to the pension of the Judge of the Probate and Judge of the Divorce Courts : Be it declared and enacted, that the said pension was intended to be and shall be similar in amount and in all other respects to the pension to which the puisne judges of the superior courts of common law are entitled.

There shall be paid to each of the said judges of the Judicial Committee so long as he shall hold such office a salary of five thousand pounds a year including any pension to which he may be entitled.

Any salary payable under this Act shall be charged on and paid § 1, 2, 3, 4 out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland. It shall grow due from day to day, and shall be payable to the person entitled thereto, or to his executors or administrators, at such intervals in every year, not being longer than three months, as the Treasury may from time to time determine.

It shall be the duty of every person appointed to act as a paid member of the Judicial Committee under this Act to attend the sittings of the said committee when summoned thereto unless he shall be prevented by reasonable cause; and such members shall hold their office during good behaviour, and shall continue to hold their offices notwithstanding the demise of the Crown, but they shall be removable by Her Majesty, her heirs and successors, upon the address of both Houses of Parliament: Provided always, they shall hold their offices subject to such arrangements as may be hereafter made by Parliament for the constitution of a supreme court of appellate jurisdiction.

Provided that no member of the Judicial Committee of the Privy Council shall take part in the hearing of any appeal from any decision or judgment which he has given or assisted in giving.

2. In this Act—

The term "Superior Courts at Westminster" means Her Majesty's Superior Courts of Law and Equity at Westminster, inclusive of the Court of Probate in England and the Court for Divorce and Matrimonial Causes, and the High Court of Admiralty of England. Definition of "Superior Courts at Westminster."

3. This Act shall not, except in so far as is by this Act expressly provided, affect the Act of the session of the third and fourth years of the reign of King William the Fourth, chapter forty-one, intitled "An Act for the better administration of justice in His Majesty's Privy Council," or any Act amending the same. Saving of Acts relating to Judicial Committee.

4. This Act may be cited as "The Judicial Committee Act, 1871," and shall, so far as is consistent with the tenor thereof, be construed as one with any Acts for the time being in force relating to the Judicial Committee of the Privy Council. Short title.

## TRUSTEES RELIEF ACT, 1847,

*10 and 11 Vict., cap. 96.*

[~~18~~ This statute is referred to in sec. 25, page 22. The third section has been repealed by 35 and 36 Vict., c. 44, s. 26, and is therefore omitted here.]

An Act for better securing trust funds, and for the relief of trustees.

[22nd July, 1847.]

Whereas it is expedient to provide means for better securing trust funds, and for relieving trustees from the responsibility of administering trust funds in cases where they are desirous of being so relieved :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same :

§ 1, 2

Trustees may pay trust monies or transfer stocks and securities into the Court of Chancery.

1. That all trustees, executors, administrators, or other persons, having in their hands any monies, belonging to any trust whatsoever, or the major part of them, shall be at liberty, on filing an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the Privy of the Accountant-General of the High Court of Chancery, into the Bank of *England*, to the account of such Accountant General in the matter of the particular trust (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it), in trust to attend the orders of the said Court ; and that all trustees or other persons having any annuities or stocks standing in their name in the books of the Governor and Company of the Bank of *England* or of the *East India* Company, or *South Sea* Company, or any Government or Parliamentary Securities standing in their names, or in the names of any deceased persons of whom they shall be personal representatives, upon any trusts whatsoever, or the major part of them, shall be at liberty to transfer or deposit such stocks or securities into or in the name of the said Accountant General, with his privy, in the matter of the particular trust (describing the same as aforesaid), in trust to attend the orders of the said Court ; and in every such case the receipt of one of the cashiers of the said Bank for the money so paid, or, in the case of the stocks or securities, the certificate of the proper officer, of the transfer or deposit of such stocks or securities, shall be a sufficient discharge to such trustees or other persons for the money so paid, or the stocks or securities so transferred or deposited.

Receipt of Bank Cashier, or certificate of proper officer, to be sufficient discharge.

2. And be it enacted, That such orders as shall seem fit shall be from time to time made by the High Court of Chancery in respect of the trust monies, stocks, or securities so paid in, transferred, and on petition, deposited as aforesaid, and for the investment and payment of any

such monies, or of any dividends or interest on any such stocks or securities, and for the transfer and delivery out of any such stocks and securities, and for the administration of any such trusts generally, upon a petition to be presented in a summary way to the Lord Chancellor or the Master of the Rolls, without bill, by such party or parties, as to the Court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the Court shall see fit and direct; and every order made upon any such petition shall have the same authority and effect, and shall be enforced and subject to rehearing and appeal, in the same manner as if the same had been made in a suit regularly instituted in the Court; and if it shall appear that any such trust funds cannot be safely distributed without the institution of one or more suit or suits, the Lord Chancellor or Master of the Rolls may direct any such suit or suits to be instituted.

without Bill,  
for applica-  
tion of trust  
monies and  
administra-  
tion of trust.

Lord Chan-  
cellor, with  
Master of the  
Rolls, &c.,  
may make  
general  
orders.

4. And be it enacted, That the Lord Chancellor, with the assistance of the Master of the Rolls or of one of the Vice-Chancellors, shall have power, and is hereby authorized to make such orders as from time to time shall seem necessary for better carrying the provisions of this Act into effect.

5. And be it enacted, That in the construction of this Act, the expression "The Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of *Great Britain* for the time being.

Construc-  
tion of ex-  
pression  
"Lord Chan-  
cellor."

6. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

Act may be  
amended,  
&c.

## TRUSTEES RELIEF ACT, 1849.

. 12 and 13 Vic., cap. 74.

[~~43~~ This statute is referred to in sec. 25, page 22.]

§ 1, 2

10 & 11 Vict.,  
c. 96.

Court of  
Chancery  
may, upon  
application  
by majority  
of trustees,  
&c., order  
payment or  
transfer of  
trust  
monies,  
stocks, or  
securities  
into Court of  
Chancery.

Act may be  
amended,  
&c.

An act for the further relief of Trustees. [28th July, 1849.]  
Whereas difficulties have arisen in the transfer of securities vested in Trustees in certain cases under the provisions of an Act passed in the Session of Parliament, holden in the tenth and eleventh years of the reign of her present Majesty, intituled, *An Act for better securing Trust Funds, and for the Relief of Trustees*, and it is expedient to make further provision for carrying into effect the objects of the said recited Act:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

1. That if upon any petition presented to the Lord Chancellor or Master of the Rolls in the matter of the said Act it shall appear to the Judge of the Court of Chancery before whom such petition shall be heard that any monies, annuities, stocks, or securities are vested in any persons as trustees, executors, or administrators, or otherwise, upon trusts within the meaning of the said recited Act, and that the major part of such persons are desirous of transferring, paying, or delivering the same to the Accountant General of the High Court of Chancery under the provisions of the said recited Act, but that for any reason the concurrence of the other or others of them cannot be had, it shall be lawful for such Judge as aforesaid to order and direct such transfer, payment, or delivery to be made by the major part of such persons without the concurrence of the other or others of them; and where any such monies or Government or Parliamentary securities shall be deposited with any banker, broker, or other depository, it shall be lawful for such Judge as aforesaid to make such order for the payment or delivery of such monies, Government or Parliamentary securities, to the major part of such trustees, executors, administrators, or other persons as aforesaid, for the purpose of being paid or delivered to the said Accountant General as to the said Judge shall seem meet; and every transfer of any annuities, stocks, or securities, and every payment of money or delivery of securities, in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the Act of all the persons entitled to the annuities, stocks, or securities so transferred, or the monies or securities so paid or delivered respectively, and shall fully protect and indemnify the Governor and Company of the Bank of England, the East India Company, and the South Sea Company, and all other persons acting under or in pursuance of such order.

2. And be it enacted, That this Act may be amended or repealed in the present Session of Parliament.



## NOTES.

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### NOTE 1.—The Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.—(Title, p. 1.)

This tribunal was established in its present form by 2 and 3, Will. IV., c. 92; 3 and 4, Will. IV., c. 41, and 6 and 7, Vict., c. 38, for the disposal of appeals and such other matters as the Queen may, in Council, refer to them. The principal Acts referring to the Committee are as follows:—

As to transfer to Privy Council of Power of Court of Delegates, see 2 and 3, Will. IV., c. 92.

As to Constitution Powers and Jurisdiction of Judicial Committee, see 3 and 4, Will. IV., c. 41; 3 and 4 Vict., c. 65, s. 17; 6 and 7 Vict., c. 38; 7 and 8 Vict., c. 69; 14 and 15 Vict., c. 83, ss. 15, 16; 34 and 35 Vict., c. 91.

As to Constitution of Judicial Committee in Ecclesiastical cases, see 3 and 4 Vict., c. 86.

As to Appeals to Judicial Committee from Ecclesiastical and Admiralty Courts, see 2 and 3 Will. IV., c. 92; 3 and 4 Vict., c. 65, s. 17; 3 and 4 Vict., c. 66, s. 4; 6 and 7 Vict., c. 38; 24 and 25 Vict., c. 10; 27 and 28, Vict., c. 25.

As to Appeals to Judicial Committee from Colonies, see 7 and 8 Vict., c. 69.

As to Appeals to Judicial Committee from India, see 8 and 9 Vict., c. 30.

As to Appeals to Judicial Committee from Admiralty Court, and making of general orders by, in prize causes, see 27 and 28 Vict., c. 25.

As to Jurisdiction of Judicial Committee to grant license for republication of books when refused by Proprietor after Author's death, see 5 and 6 Vict., c. 45, s. 5.

As to Jurisdiction of Judicial Committee on the subject of Patents for Inventions, see 5 and 6 Will. IV., c. 83; 2 and 3 Vict., c. 67; 6 and 7 Vict., c. 38; 7 and 8 Vict., c. 69; 15 and 16 Vict., c. 83; 16 and 17 Vict., c. 115.

As to Administration of Oath for purposes of Judicial Committee, 16 and 17 Vict., c. 85.

As to Appointment of Paid Members of Judicial Committee, see 34 and 35 Vict., c. 91.

### NOTE 2.—Court.—(§ 1, p. 1.)

A Court is defined to be a place wherein justice is judicially administered (Co. Litt. 58). And as by our excellent constitution the sole executive power of the laws is vested in the person of the Sovereign, it will follow that all Courts of Justice (which are the medium by which he administers the laws) are derived from the power of the Crown. For whether created by Act of Parliament or letters patent or subsisting by prescription—the only methods by which any Court of Judicature can exist (Co. Litt. 260), the King's consent in the two former is expressly, and in the latter impliedly given. In all these Courts the Sovereign is supposed, in contemplation of law, to be always present, but as that is in fact impossible, he is there represented by his Judges, whose power is only an emanation of the Royal prerogative.—(3 Step. Black, 379, 5th Ed.)

**NOTE 3.—Short Title.—**(§ 1, p. 1.)

The short title of the Act is the "Supreme Court of Judicature Act, 1873," but although this is short in comparison with its full title, the profession and public will probably still further shorten it by using the title employed in this work, "The Judicature Act, 1873."

**NOTE 4.—Except any provision thereof which is declared to take effect on the passing of this Act.—**(§ 2, p. 1.)

These exceptions are (I) section 27 on the subject of vacations (II) section 60 as to the establishment of district registries in the country for the Supreme Court, and (III) section 63 as to the making of Rules of Court.

**NOTE 5.—The High Court of Chancery of England.—**(§ 3, p. 2.)

This is the first-named Court absorbed by the Supreme Court of Judicature in England. Its name is derived from the Judge who presided there, the Lord Chancellor. The Court had two distinct tribunals, the one ordinary being a Court of Common Law and of record, the other extraordinary being a Court of Equity and not of record. The jurisdictions of these Courts will be found in the note, "The Jurisdiction of the High Court of Chancery."

The history of the equitable jurisdiction is tersely given by Hallam, as follows:—

"The equitable jurisdiction, as it is called, of the Court of Chancery, appears to have been derived from that extensive judicial power which, in early times, the king's ordinary council had exercised. The Chancellor, as one of the highest officers of state, took a great share in the council's business; and when it was not sitting, he had a Court of his own, with jurisdiction in many important matters, out of which process to compel appearance of parties might at any time emanate. It is not unlikely, therefore, that redress, in matters beyond the legal province of the Chancellor, was occasionally given through the paramount authority of this Court. We find the council and the Chancery named together in many remonstrances of the Commons against this interference with private rights, from the time of Richard II. to that of Henry VI. It was probably in the former reign that the Chancellor began to establish systematically his peculiar restraining jurisdiction. This originated in the practice of feoffments to uses, by which the feoffee, who had legal seisin of the land, stood bound by private engagement to suffer another, called the cestui que use, to enjoy its use and possession. Such fiduciary estates were well known to the Roman jurists, but inconsistent with the feudal genius of our law. The Courts of Justice gave no redress, if the feoffee to uses, violated his trust by detaining the land. To remedy this, an Ecclesiastical Chancellor devised the writ of subpoena, compelling him to answer upon oath as to his trust. It was evidently necessary also to restrain him from proceeding, as he might do, to obtain possession; and this gave rise to injunctions, that is, prohibitions to sue at law, the violation of which was punishable by imprisonment as a contempt of Court. Other instances of breach of trust occurred in personal contracts, and others wherein, without any trust, there was a wrong committed beyond the competence of the Courts of law to redress, to all which the process of subpoena was made applicable.

"This extension of a novel jurisdiction was partly owing to a fundamental principle of our common law, that a defendant cannot be examined, so that, if no witness or written instrument could be produced to prove a demand, the plaintiff was wholly debarred of justice; but in a still greater degree to a strange narrowness and scrupulosity of the judges, who, fearful of quitting the letter of their precedents, even with the clearest analogies to guide them, repelled so many just suits, and set up rules of so much hardship, that men were thankful to embrace the relief held out by a tribunal acting in a more rational spirit. This error the common lawyers began to discover, in time to resume a great part of their jurisdiction in matters of contract, which would otherwise have escaped from them. They made, too, and apparently successful effort to recover their exclusive authority over real property, by obtaining a statute for turning uses into possession; that is, for annihilating the fictitious estate of the feoffee to uses, and vesting the legal as well as equitable possession in the cestui que use. But this victory, if I may use such an expression, since

it would have freed them in a most important point from the Chancellor's control, they threw away by one of those timid and narrow constructions which had already turned so much to their prejudice and the permitted trust-estates, by the introduction of a few more words into a conveyance to maintain their ground contra-distinguished from the legal seisin, under the protection and guarantee as before, of the Courts of Equity."—[Hallam's Const. Hist. of Eng., chap. VI., p. 246]

The principal Statutes in connection with the Court of Chancery are as follows:—

#### 1.—GENERALLY.

As to damages on untrue suggestion in Court, see 17 Richd. II, c. 6.  
As to subpoena for appearance not to issue till after bill filed, &c., see 4 and 5 Ann, c. 3.

As to transfer, &c., by Court of Stock or East India Stock, without making Bank of England a party, see 39 and 40 Geo. III., c. 36.

As to issue of distringas, or of restraining order by Court to restrain transfer of stock, shares, &c., see 5 Vict., c. 5.

As to process for enforcing orders of Court in Court of Chancery in Ireland, and *vice versa*, see 41 Geo. III., c. 90.

As to taking bills pro confesso in court, entering appearance for defendant, suit against person with privilege of Parliament and process of contempt, see 11 Geo. IV. and 1 Will. IV., c. 36; 2 and 3 Will. IV., c. 58; 23 and 24 Vict., c. 149.

As to purchase of land, substitution of Court of Chancery of County Palatine of Lancashire in certain cases for Court of Chancery, see 13 and 14 Vict., c. 43, s. 12; 17 and 18 Vict., c. 82, s. 13.

As to payment of legacy or residuary personalty by personal representative into Court of Chancery where legatee, infant, or absent, see 36 Geo. 3, c. 52, s. 32.

As to payment by majority of trustees of trust money, stocks, &c., into Court of Chancery and order of Court thereon, see 10 and 11 Vict., c. 96; 12 and 13 Vict., c. 74.

As to transfer by Court of Chancery of property or rights vested in trustee, personal representative, or mortgagee, under disability, lunatic, unknown, out of jurisdiction, refusing to act, &c., and power of Court in decree for specific performance, partition, exchange, or sale, to declare persons trustees, see 13 and 14 Vict., c. 60; 15 and 16 Vict., c. 55; 17 and 18 Vict., c. 82; 31 and 32 Vict., c. 40.

As to appointment of new trustee by Court of Chancery or Lord Chancellor, see 13 and 14 Vict., c. 60; 15 and 16 Vict., c. 55.

As to appointment of new trustee where trustee was appointed by Chancery Court of Lancaster, see 28 and 29 Vict., c. 40.

As to decree by Court of Chancery in absence of trustee, see 13 and 14 Vict., c. 60.

As to application by trustee or by personal representative to Court of Chancery for advice, see 22 and 23 Vict., c. 35; 23 and 24 Vict., c. 38.

As to disposal of money paid in Court under repealed Act, see 10 Geo. IV., c. 13.

As to service out of Court of proceedings respecting land in England, see 2 and 3 Will. IV., c. 33; 4 and 5 Will. IV., c. 82; 15 and 16 Vict., c. 86.

As to practice and proceedings in Court, see 3 and 4 Will. IV., c. 94; 4 and 5 Vict., c. 52; 5 Vict., c. 5; 5 and 6 Vict., c. 103; 13 and 14 Vict., c. 35; 15 and 16 Vict., c. 80; 15 and 16 Vict., c. 86; 16 and 17 Vict., c. 137; 21 and 22 Vict., c. 27; 23 and 24 Vict., c. 128.

As to taking of affidavits, answers, acknowledgments of deeds, &c., for Court, in and out of England, and appointment of commissioners, see 5 and 6 Vict., c. 103; 6 and 7 Vict., c. 82; 11 and 12 Vict., c. 10; 15 and 16 Vict., c. 85, s. 22; 16 and 17 Vict., c. 70, s. 57; 16 and 17 Vict., c. 78; 25 and 26 Vict., c. 89, s. 128.

As to reference by Court of matters to County Court, see 9 and 10 Vict., c. 95, s. 22; 28 and 29 Vict., c. 99.

As to reference by Court of winding-up of company to County Court, see 30 and 31 Vict., c. 131, ss. 41-6.

- As to special case in Court, see 13 and 14 Vict., c. 35.
- As to sitting of Common Law Judge to assist in Court, see 14 and 15 Vict., c. 83.
- As to power to sit in Court and procedure in chambers, see 15 and 16 Vict., c. 80; 18 and 19 Vict., c. 134.
- As to proceeding in suit without or appointing legal personal representative ad litem, see 15 and 16 Vict., c. 86.
- As to motion for decree and interlocutory proceedings in Court, see 15 and 16 Vict., c. 86.
- As to power of Court and obligation to decide questions of fact and law and legal right of parties, see 15 and 16 Vict., c. 86; 25 and 26 Vict., c. 42.
- As to deposits on appeal and exceptions, see 15 and 16 Vict., c. 87, s. 41.
- As to sale by auction by Court without license, see 15 and 16 Vict., c. 87, s. 42.
- As to awarding and assessment of damages in Court, and trial of questions in Court before Jury, or by oral examination before Judge, see 21 and 22 Vict., c. 27; 25 and 26 Vict., c. 42.
- As to visitation and examination by solicitor to Suitors' Fund of prisoners for contempt in Queen's Prison, and report by gaolers of prisoners in contempt, see 23 and 24 Vict., c. 149.
- As to sale by Court of land with indefeasible title, see 25 and 26 Vict., c. 53.
- As to winding-up and dissolution of company, see 25 and 26 Vict., c. 89; 30 and 31 Vict., c. 131.
- As to opening of biddings by restrained, see 30 and 31 Vict., c. 48, s. 7.
- As to administration of estate of deceased person:—(I) Appointment of person to collect assets, see 38 Geo. 3, c. 87. (II) Account of debts and liabilities of deceased, and protection of personal representatives against actions, see 13 and 14 Vict., c. 35, ss. 19-33; 23 and 24 Vict., c. 38, s. 14. (III) Order for receipt of dividends on, or a transfer of stock standing in name of deceased whose representative is insane, out of the jurisdiction, cannot be found, neglects or refuses to act, or is not known to be alive or dead, and power of court in decree for specific performance, partition, exchange, or sale to declare persons trustees, see 13 and 14 Vict., c. 60; 15 and 16 Vict., c. 55; 17 and 18 Vict., c. 82; 31 and 32 Vict., c. 40. (IV) Of real and personal estate on summons, see 15 and 16 Vict., c. 86, ss. 44-47. (V) Of real and personal estate of contributory, see 25 and 26 Vict., c. 89, s. 106.
- As to rules and orders for regulation of proceedings in Court, see 3 and 4 Vict., c. 94; 4 and 5 Vict., c. 52; 5 Vict., c. 5; 5 and 6 Vict., c. 103; 13 and 14 Vict., s. 35; 15 and 16 Vict., c. 86, 15 and 16 Vict., c. 87; 21 and 22 Vict., c. 27. (I) As to proceedings in chambers, see 15 and 16 Vict., c. 80; 16 and 17 Vict., c. 137, s. 31. (II) As to securities for investment of money in Court, see 23 and 24 Vict., c. 38. (III) For carrying into effect report of Chancery evidence Commissioners, see 23 and 24 Vict., c. 128. (IV) As to companies, see 25 and 26 Vict., c. 89, s. 170; 30 and 31 Vict., c. 131, s. 20. (V) As to arrangements of railway companies with creditors, see 30 and 31 Vict., c. 127, s. 22.
- As to sequestration by Court of property of debtor notwithstanding no arrest for debt, see 32 and 33 Vict., c. 62, s. 8.
- As to abatement of Chancery suit by death, marriage, &c., see 15 and 16 Vict., c. 86, s. 52.
- As to how amendment to be made in Chancery suits, see 15 and 16 Vict., c. 86, s. 53.
- As to summary proceedings by petition in Court of Chancery on breach of trust for charities, see 52 Geo. 3, c. 101.
- As to registry of property of charities with Clerk of the Peace, petition to Court of Chancery in default of registry, inspection of register, and publication of objects of charity, see 52 Geo. 3, c. 102; 16 and 17 Vict., c. 137, s. 43.
- As to appointment of and vesting of property in new trustees for charities, by Court of Chancery, see 2 and 3 Will. IV., c. 57; 13 and 14 Vict., c. 60, s. 45; 16 and 17 Vict., c. 137.
- As to jurisdiction of Chancery Judge in Chambers, District Courts of Bankruptcy, and County Court, as to charities, see 16 and 17 Vict., c. 137; 23 and 24 Vict., c. 136.
- As to exemption of universities, cathedrals, places of religious worship,

societies supported by voluntary subscriptions, partially of educational, &c., from Court of Chancery and Commissioners, see 32 and 33 Vict., c 56, s. 52.

As to duties and salary of, and fees taken by Clerk of the Crown in Chancery, see 3 and 4 Will. IV., c. 84; 5 and 6 Will. IV., c. 47; 7 and 8 Vict., c. 77; 15 and 16 Vict., c. 87, s. 23; 17 and 18 Vict., c. 94; 32 and 33 Vict., c. 91.

As to proceedings in Court in lieu of feigned issue, see 8 and 9 Vict., c. 109, s. 19.

As to decision by Court of Chancery or County Court of dispute between husband and wife as to certain separate property of wife, see 33 and 34 Vict., c. 93, s. 9.

As to abolition by jurisdiction of Chancery Court of Lancaster over lunatics, see 13 and 14 Vict., c. 43, s. 23.

As to powers of Court of Chancery as to scheme for education in Endowed Schools and admission to Grammar Schools, see 3 and 4 Vict., c. 77.

As to commissioners for making schemes to be laid before Parliament for reorganization of certain endowed schools and educational endowments, reconstitution of governing bodies, religious instruction, masterships, &c., and restriction of powers of Charity Commissioners and Court of Chancery respecting the same, see 32 and 33 Vict., c. 56. In case of small endowments, see 33 and 34 Vict., c. 75, s. 75.

As to appointment of Tipstaff of Court of Chancery and Common Law and security, see 25 and 26 Vict., c. 104.

As to redemption of annuities, pensions, &c., charged on Consolidated Fund, or on annual votes, with consent of Ecclesiastical Commissioners or Court of Chancery in certain cases, see 36 and 37 Vict., c. 57.

## II.—OFFICES AND INCOME.

As to sale of part of funds of Court for new law courts and indemnity by Consolidated Fund, see 28 and 29 Vict., c. 48.

As to payment of income of Court to Consolidated Fund, see 32 and 33 Vict., c. 91, s. 8.

As to offices for Registrar and six clerks and Accountant-General, see 15 Geo. III., c. 22; 15 Geo. III., c. 56; 5 and 6 Vict., c. 103; 28 and 29 Vict., c. 48, s. 22.

As to transfer to Commissioners of Works and Public Buildings of buildings, &c., of certain offices of Court of Chancery, see 35 and 36 Vict., c. 44, s. 21.

As to officers of Court, their number, appointment, salaries, duties, &c., see 53 Geo. III., c. 24; 2 and 3 Will. IV., c. 122; 3 and 4 Vict., c. 94; 5 Vict., c. 5; 5 and 6 Vict., c. 103; 8 and 9 Vict., c. 105; 10 and 11 Vict., c. 97; 11 and 12 Vict., c. 10; 14 and 15 Vict., c. 83; 15 and 16 Vict., c. 80; 15 and 16 Vict., c. 86; 15 and 16 Vict., c. 87; 18 and 19 Vict., c. 134; 23 and 24 Vict., c. 149; 27 and 28 Vict., c. 15; 30 and 31 Vict., c. 87; 32 and 33 Vict., c. 91.

As to pensions, &c., of officers of Court, see 15 and 16 Vict., c. 87; 16 and 17 Vict., c. 98, s. 11; 22 Vict., c. 26; 29 and 30 Vict., c. 68; 32 and 33 Vict., c. 91.

As to abolition and regulation of offices in Court, see 2 and 3 Will. IV., c. 111; 3 and 4 Will. IV., c. 84; 3 and 4 Will. IV., c. 94; 5 and 6 Vict., c. 103; 8 and 9 Vict., c. 105; 15 and 16 Vict., c. 80; 15 and 16 Vict., c. 87; 23 and 24 Vict., c. 149; 32 and 33 Vict., c. 91; 35 and 36 Vict., c. 44.

As to curators abolished and duties transferred to petty bag, see 5 and 6 Will. IV., c. 82.

As to officers of petty bag and enrolment and proceedings on common law side of Court regulated, see 11 and 12 Vict., c. 94; 12 and 13 Vict., c. 109; 32 and 33 Vict., c. 91.

As to abolition of masters in Court, see 15 and 16 Vict., c. 80; 17 and 18 Vict., c. 100; 23 and 24 Vict., c. 149.

As to appointment, &c., of chief clerks and of conveyancing counsel, see 15 and 16 Vict., c. 80.

As to examiners in Court, see 15 and 16 Vict., c. 86; 16 and 17 Vict., c. 22.

As to salaries of Judges of Court charged on Consolidated Fund, see 15 and 16 Vict., c. 87; 32 and 33 Vict., c. 91.

As to transfer of duties of masters extraordinary in Court, see 16 and 17, Vict. c. 78.

As to fees in Court, see 3 and 4, Will. IV., c. 94; 5 and 6 Vict., c. 103; 8 and 9 Vict., c. 105; 15 and 16 Vict., c. 87; 32 and 33 Vict., c. 91.

As to fees in Court payable by stamps, see 15 and 16 Vict., c. 87; 32 and 33 Vict., c. 91.

As to salaries, superannuation, &c., of officers, payable out of annual votes of Parliament, see 32 and 33 Vict., c. 91.

As to annual accounts of income and expenditure, see 32 and 33 Vict., c. 91.

As to abolition of office of Accountant General transfer and vesting of property, &c., and performance of duties by Paymaster General, see 35 and 36 Vict., c. 44.

As to forgery of instruments signed by Paymaster General, &c., see 35 and 36 Vict., c. 44, s. 12.

As to deposit account for suitors' monies paid into Court and dealings with securities in Court, see 35 and 36 Vict., c. 44, s. 14, &c.

### III.—IRELAND.

As to enforcing orders of Court in England, see 41 Geo. III., c. 90; 5 Geo. IV., c. 111.

As to service out of Court of subpoena, &c., in suit respecting lands in court, see 2 and 3 Will. IV., c. 33; 4 and 5 Will. IV., c. 82. See also statutes in notes, "Questions on the custody and education of infants," "Lunatics."

#### NOTE 6.—The Court of Queen's Bench.—(§ 3, p. 2.)

The Court of Queen's Bench was so called because the Sovereign used to sit there in person (4 Inst. 73). The style of the Court having been *coram ipso rege* or *coram ipsa regina* was, before the passing of the Judicature Act, the Supreme Court of Common Law in the Kingdom, consisting of a Chief Justice and four *puisne* Justices, who were by their office the Sovereign Conservators of the Peace and Supreme Coroners of the Land. Yet, though the Sovereign himself used to sit in this Court, he did not, neither by law was he empowered to determine any cause or motion but by the mouth of his Judges to whom he had committed his whole judicial authority (4 Inst. 71). The King, however, used to decide causes in person in the *Aula Regia* "In curia domini regis ipse in propria persona jura decernit (Dial. de Scacch. l. 1, s. 4). After its dissolution Edward the Fourth in the second year of his reign sat in the Court of King's Bench three days together, but probably not for the purpose of acting as a Judge (see Christian's Bl. iii., 41, n. and Henry's Hist. of Great Britain, v., 382). And in later times James the First is said to have sat there in person, but was informed by his Judges that he could not deliver an opinion. Much of the early history of this Court, which is the remnant of the *aula regia*, will be found in the note following on the "Court of Exchequer." It was not, nor could it be from its very nature and constitution, fixed to any certain place, but might follow the Sovereign's person wherever he went; for which reason all process issuing out of this Court in the Sovereign's name was returnable "*ubicunque fuerimus in Anglia*" It had indeed, for some centuries past usually sat at Westminster, being an ancient palace of the Crown; but might remove with the Sovereign to York or Exeter if he thought proper to command it. And we find that after Edward the First had conquered Scotland it actually sat at Roxburgh (M. 20, 21, Edw. I.: Hale Hist. C.L., 200). And it was moreover especially provided in the *Articuli Super Cartas* (28, Edw. I., c. 5) that the King's Chancellor and the Justices of his Bench should follow him, so that he might have at all times near unto him some that may be learned in the laws. In the time of the Commonwealth the King's Bench sat under the name of the Upper Bench. Its jurisdiction will be found stated in the note, "The Jurisdiction of the Court of Queen's Bench."

The principal statutes relating to the Queen's Bench are as follows:—

As to remitting offenders to counties by Justices of the Queen's Bench, see 6 Hen. VIII., c. 6.

As to informations in Queen's Bench, only by order of Court, see 4 Will. and Mar., c. 18.

As to pleading and proceedings on information or indictment of misdemeanor in Queen's Bench and abolition of imparlance, see 60 Geo. III., and 1 Geo. IV., c. 4.

As to discharge of defendants in Queen's Bench on bail, see 4 Will. and Mar., c. 18.

As to jurisdiction of Queen's Bench for trial of offences committed by public officers out of Great Britain, see 13 Geo. III., c. 63, 42 Geo. III., c. 85.

As to warrant by Justice of Queen's Bench for apprehension of and binding over person to answer indictment or information in (not treason or felony) and delivery of indictment, &c., and entry of plea for person so apprehended, see 48 Geo. III., c. 58.

As to registry in Queen's Bench of warrant to confess judgment and *cognovit actionem*, 3 Geo. IV., c. 39; 32 and 33 Vict., c. 62.

As to officers and fees in Queen's Bench, see 6 Geo. IV., c. 82.

As to summoning of Grand Juries in Queen's Bench, see 36 and 37 Vict., c. 65.

As to marshals of Queen's Bench not to bail felon, see 5 Edwd. III., c. 8.

As to abolition of offices in Queen's Bench, see 6 and 7 Vict., c. 20.

As to registry of Bill of Sale in Court of Queen's Bench, see 17 and 18 Vict., c. 36; 28 and 29 Vict., c. 45; 29 and 30 Vict., c. 96, 101.

As to removal to Central Criminal Court by Queen's Bench of indictments and inquisitions for offences out of jurisdiction of Central Criminal Court and proceedings thereon, see 19 and 20 Vict., c. 16.

As to regulation of Crown Office its officers' fees and business, see 4 Will. and Mar., c. 22; 6 and 7 Vict., c. 20; 17 and 18 Vict., c. 94; 23 and 24 Vict., c. 54.

As to sealing of writs in Crown Office, see 8 and 9 Vict., c. 34.

As to payment of fees in Crown Office by stamps, see 28 and 29 Vict., c. 45; 29 and 30 Vict., c. 101.

As to issue of writ of *mandamus* from Queen's Bench (except by 1 Will. IV., c. 22, s. 1; 17 and 18 Vict., c. 125) to compel Justices to set out evidence in their convictions, see 3 Geo. IV., c. 23, and 11 and 12 Vict., c. 44, s. 5; as to endorsement on writ as to *mandamus*, see Common Law Procedure Act, 1854, ss. 68-77; as to County Court Judge, see 19 and 20 Vict., c. 108, s. 43; for election of a Mayor, see 11 Geo. I., c. 4; as to proceedings as to returns to writ of *mandamus* and protection of officers to whom directed, see 9 Ann., c. 25; 1 Will. IV., c. 21; as to demurrer to return of, error on and protection of persons obeying writ, see 6 and 7 Vict., c. 67; as to practice on writ, respecting Municipal Corporations, see 6 and 7 Vict., c. 89; as to claims of writ in action and issue of writ, see 17 and 18 Vict., c. 125, ss. 68-75; 23 and 24 Vict., c. 126; as to proceedings by motion for prerogative writ, see 17 and 18 Vict., c. 125, s. 76.

See also notes, "Superior Courts of Common Law."

#### NOTE 7.—The Court of Common Pleas.—(§ 3, p. 2)

The history of the Court of Common Pleas, or as it is sometimes technically called the Court of Common Bench, will be found in the next note under the head, "The Court of Exchequer." Its jurisdiction is given in the note "The Jurisdiction of the Court of Common Pleas." It was detached from the King's Court (*Aula Regis*) as early as the reign of Richard I., and the 14th clause of Magna Charta enacted that it should not follow the King's Court but be held in some certain place, which was at Westminster.

The principal statutes referring specially to the Court are as follows:—

As to the Court not following the Royal Court, see 25 Edwd. I. Mag. Car., c. 11.

As to office in the Court for enrolment of fines, see 23 Eliz., c. 3.

As to officers and fees in the Court [see also statutes mentioned in note "Superior Courts of Common Law"] see 25 and 26 Vict., c. 96.

As to jurisdiction and officers for fines and recoveries, disentailing deeds and conveyances by married women, see 3 and 4 Will. IV., c. 74; 5 and 6 Will. IV., c. 82; 5 and 6 Vict., c. 32.

As to abolition of offices in Court, see 5 and 6 Will. IV., c. 82; 8 and 9 Vict., c. 34.

As to jurisdiction of Court over registry of Parliamentary Voters, see 6 and 7 Vict., c. 18.

As to sealing writs of the Court, see 8 and 9 Vict. c. 34.

As to admission of Barristers to practise in the Court, see 9 and 10 Vict., c. 54.

As to fees and disbursements of Master of the Court for entering judgments, acknowledgements of Married Women, &c., see 13 and 14 Vict., c. 75; 28 and 29 Vict., c. 45; 29 and 30 Vict., c. 101.

As to removal of County Court Bonds from Common Pleas Register, see 19 and 20 Vict., c. 108.

See also statutes in notes, "Lancaster," "Superior Courts of Common Law."

## NOTE 8.—The Court of Exchequer.—(§ 3, p. 2.)

By the ancient Saxon Constitution there was only one Superior Court of Justice in the Kingdom, and that Court had cognizance both of civil and spiritual causes, viz., the *Wittenagemote*, or General Council (see Turn. Hist. Ang. Sax. III., 177, 6th Ed.) which assembled annually or oftener, wherever the King kept his Christmas, Easter, or Whitsuntide, as well to do private justice as to consult upon public business. At the Conquest the ecclesiastical jurisdiction was diverted into another channel; and the Conqueror fearing danger from these annual Parliaments contrived also to separate their ministerial power, as Judges, from their deliberative, as counsellors to the Crown. He, therefore established a constant court in his own hall, thence called by Bracton (Lib. 3, tr. 1, c. 7) and other ancient authors *aula regia*, or *aula regis*. This court was composed of the King's great officers of state resident in his Palace, and usually attendant on his person: such as the Lord High Constable and Lord Mareschal, who chiefly presided in matters of honour and of arms; determining according to the law military and the law of nations. Besides these there were the Lord High Steward and Lord Great Chamberlain, the Steward of the Household, the Lord Chancellor, whose peculiar business it was to keep the King's seal and examine all such writs, grants, and letters as were to pass under that authority; and the Lord High Treasurer, who was the principal adviser in all matters relating to the revenue. These high officers were assisted by certain persons learned in the laws, who were called the King's justiciars or justices; and by the greater barons of Parliament, all of whom had a seat in the *aula regia*, and formed a kind of Court of Appeal, or rather of advice, in matters of great moment and difficulty. All these, in their several departments, transacted all secular business, both criminal and civil, and likewise the matters of the revenue; and over all presided one special magistrate, called the chief justiciar, or *capitulis justiciarius totius Anglie*; who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the King's absence. And this officer it was who principally determined all the vast variety of causes that arose in this extensive jurisdiction; and, from the plenitude of his power, grew at length both obnoxious to the people and dangerous to the government which employed him (Spelm. Gl., 331, 332, 333; Glib. Hist. C. P. Introd. 17).

This great universal court being bound to follow the King's household in all his progresses and expeditions, the trial of common causes therein was found very burthensome to the subject. Wherefore King John, who dreaded also the power of the justiciar, very readily consented to that article which now forms the eleventh chapter of Magna Charter and enacts that "*communia placita non sequantur curiam regis, sed teneantur in aliquo loco certo*." This certain place was established in Westminster Hall, the place where the *aula regis* originally sat when the King resided in that city; and there it has ever since continued. And the court being thus rendered fixed and stationary the judge became so too, and a chief, with other justices, of the Common Pleas, was thereupon appointed, with jurisdiction to hear and determine all pleas of land, and injuries merely civil between subject and subject. Which critical establishment of this principal Court of common law, at that particular juncture and that particular place, gave rise (as formerly explained) to the Inns of Court in its neighbourhood, and, thereby collecting together the whole body of the common lawyers, enabled the law itself to withstand the attacks of the canonists and civilians, who laboured to expirate and destroy it.

The *aula regia* being thus stripped of so considerable a branch of its jurisdiction, and the power of the chief justiciar being also considerably curbed by many articles in the great charter, the authority of both began to decline apace under the long and troublesome reign of King Henry the Third. And in further pursuance of this example, the other several offices of the chief justiciar were, under Edward the First (who new modelled the whole frame of our judicial polity), subdivided and broken into distinct Courts of Judicature. A Court of Chivalry was erected, over which the constable and mareschal presided, as did the Steward of the Household over another, constituted to regulate the King's domestic servants. The High Steward, with the Barons of Parliament, formed an august tribunal for the trial of delinquent peers; and the Barons reserved to themselves in Parliament the right of reviewing the sentences of other Courts in



the last resort. The distribution of common justice between man and man was thrown into so provident an order that the great judicial officers were made to form a check upon each other, the Court of Chancery issuing all original writs under the great seal to the other Courts, the Exchequer managing the King's revenue, the Common Pleas being allowed to determine all causes between private subjects, and the Court of King's Bench retaining all the jurisdiction which was not cantoned out to other Courts, and particularly the sole cognizance of pleas of the Crown or criminal causes. The King's Bench had also assigned to it the superintendence of both the other superior courts: as, after judgment given by either of these, it was to the King's Bench that recourse was to be had to correct any error in law that might be found in the proceedings. And this superiority it continued to retain until a recent period: but by 11 Geo. IV. and 1 Will. IV., c. 70, s. 8, such errors in the Common Pleas or Exchequer, as well as those in the King's Bench itself, were redressed exclusively in a court of separate jurisdiction, viz., the Court of Exchequer Chamber, now abolished with other Courts.

The Court of Exchequer, then (to which our attention at present is particularly directed), was at first intended principally to order the revenues of the Crown and to recover the King's debts and duties (4 Inst. 103-116—see *Attorney-General v. Sewell* 4 Mee. and W. 77), though it since acquired, and originally by usurpation, the additional character of an ordinary court of justice between subject and subject. It was called the Exchequer (*Scaccarium*) from the cheque cloth, resembling a chess board, which covered the table there, and on which, when certain of the King's accounts were made up, the sums were marked and scored with counters. It consisted of two divisions, the *Receipt* of the Exchequer [see 2 Stp. Black IV., c. 7], which managed the Royal revenue; and the *Court or judicial* part of it. The nature of the usurpation by which this Court first acquired jurisdiction was as follows:—By the original constitution of this Court, to which it was incident, as before stated, to call the King's Farmers and Debtors to account, such parties as these were privileged in their turn to sue and implead all manner of persons in the same Court that they were themselves thus called into. For this purpose they resorted to a writ called a *quo minus*, in which the plaintiff suggested that he was the King's Farmer or Debtor, and that the defendant had done him the injury or damage complained of *quo minus sufficiens existit*, by which he is the less able to pay the King his debt or rent.

Afterwards, and by gradual connivance, this surmise of being debtor to the King was allowed to be inserted by persons who did not really stand in that capacity; and came to be considered as mere words of course, so as to open the Court to all the nation equally. The same fiction was permitted on the equity side of the Court, where any person might file a bill against another upon a bare suggestion that he was the King's accountant, a suggestion which was never controverted. This usurpation, as well as the analogous one in the Queen's Bench, long since ripened into an indefeasible and unquestionable title. And at length by 2 Will. IV., c. 39, the writ of *quo minus* was abolished, and a new method substituted, giving a direct and proper jurisdiction to this Court.

The Court of Exchequer was, from the time of the separation of the Exchequer from the *aula regia* down to a very recent period, sub-divided into a court of equity and a court of common law (see 3 Bl. Com. 46). But by statute 5 Vict., c. 5—reciting that the business of the latter branch, or *plea side*, of the Court had greatly increased, and that the judges thereof might advantageously be relieved from the equity business,—all the power and jurisdiction of the Exchequer, as a court of equity, or otherwise than as a court of law or court of revenue unconnected with equity, was transferred to the Court of Chancery.

As to the equitable jurisdiction of the Exchequer as a court of *revenue* since this statute, see *Attorney-General v. Hallett*, 15 Mee. and W. 687. By 5 and 6 Vict., c. 86, certain offices on the revenue side were abolished; and the business theretofore transacted therein was transferred to *Her Majesty's Remembrancer in the Exchequer*. See also 22 and 23 Vict., c. 21, regulating the office of Queen's Remembrancer, and amending the practice and procedure on the revenue side of the Court of Exchequer. Under this last Act "general rules" were issued, which will be found printed in the 6th volume of the Exchequer reports.

The Court of Exchequer was, until the passing of the Judicature Act, therefore a court of revenue and a court of common law only.

The jurisdiction of the Court will be found more fully stated in the note, "The Jurisdiction of the Court of Exchequer."

The principal statutes relating to the Court of Exchequer are as follows:—

As to Common Pleas not to be held in Court, see 12 Edw. 1 (*Stat. Roth*).

As to King's business to be heard first in Court, see *Les Estat del Esch*, Stat temp incert, c. 12.

As to Barons to do right to all without delay in Court, see 20 Edw. 3, c. 2.

As to suit in Court for Crown debt and jurisdiction of Court, and power to fine sheriffs' officers, &c., see 33 Hen. 3, c. 39.

As to powers of Court and proceedings in Court as to excise, see 7 and 8 Geo. IV., c. 53; 4 and 5 Vict., c. 20, s. 25, &c.

As to abolition of offices in Court, see 2 and 3 Will. IV., c. 110; 5 Vict., c. 5; 5 and 6 Vict., c. 86.

As to officers of Common Law side of Court, see 2 and 3 Will. IV., c. 110.

As to equitable jurisdiction of Court transferred to Court of Chancery, see 5 Vict., c. 5.

As to abolition of Cursitor Baron of Court, see 19 and 20 Vict., c. 86.

As to appeal to and from Court and summary proceedings in Court in succession, legacy, and probate duty cases, see 16 and 17 Vict., c. 51; 28 and 29 Vic., c. 104, ss. 53-64.

As to rules by Judges in Court for pleading and practice in Crown Suits, see 15 and 19 Vict., c. 90.

As to pleading and procedure and attendance of witnesses before Court in revenue cases, see 22 and 23 Vict., c. 21.

As to originalia rolls not to be sent to Court from Petty Bag Office, see 22 and 23 Vict., c. 21.

As to special case on revenue side of Court, see 22 and 23 Vict., c. 21.

As to proceedings by English information in Court, practice, evidence, issue of writs into Counties Palatine, see 28 and 29 Vict., c. 104.

As to sittings, writs, procedure, evidence, witnesses, jury, and appeal in lieu of error, in proceedings at law on revenue side of Court, see 28 and 29 Vict., c. 104.

As to proceedings against British subjects out of jurisdiction of Court and foreigners, see 28 and 29 Vict., c. 104, s. 37, &c.

As to amendment of all defects in revenue proceedings in Exchequer, see 22 and 23 Vict., c. 21; 28 and 29 Vict., c. 104.

As to amendment of defects on English information in Exchequer, see 28 and 29 Vict., c. 104.

As to practice as attorney on revenue side of Exchequer, see 5 and 6 Vict., c. 86.

As to Bill of Exceptions in issue on revenue side of Exchequer Court, see 22 and 23 Vict., c. 21.

As to recovery of costs on revenue side of Exchequer, see 22 and 23 Vict., c. 21.

As to recovery of Crown debt in Exchequer, see 12 Edw. I. (*Stat. L., Rothlan.*)

As to recovery of Crown debt in Ireland when found due in Court of Exchequer in England, and *vice versa*, see 41 Geo. III., c. 90.

As to abolition of writ of error and proceedings in error, on revenue side of Exchequer, see 22 and 23 Vict., c. 21.

As to enquiry by Exchequer Court on objection to inquisition, finding title to lands in Crown or Duke of Cornwall, see 28 and 29 Vict., c. 104.

As to sale of lands of public accountant by Court of Exchequer for debt to Crown, see 25 Geo. III., c. 35.

As to duties of Queen's Remembrancer in revenue matters in Exchequer Court, see 5 Vict., c. 5; 5 and 6 Vict., c. 86.

See also statutes referred to in notes, "High Court of Chancery of England;" "Superior Courts of Common Law."

#### NOTE 9.—The High Court of Admiralty.—(§ 3, p. 2.)

The High Court of Admiralty which was held before the Judge of the Admiralty, was first of all erected by King Edward III. (Gloss 13: Archeion 41). There were two divisions of the Court, the Prize Court and the Instance

Court. The proceedings of the Courts of Admiralty bore much resemblance to those of the Civil Law, but were not entirely founded thereon; and they likewise adopted and made use of other laws as occasion required; such as the Rhodian Laws and the Laws of Oleron (Hale Hist., C. L. 36; Co. Litt. 11), derived from places antiently celebrated for their skill in naval affairs, viz., the Island of Rhodes in the Mediterranean, and the Island of Oleron in France. The Jurisdiction of the Court will be found in the note, "The Jurisdiction of the High Court of Admiralty."

The principal statutes in connection with the High Court of Admiralty are as follows:—

As to jurisdiction of Admiralty Court over matters relating to the sea, see 13 Ric., 2 stat. 1, c. 5; 15 Ric. 2, c. 3; 3 and 4 Vict., c. 65. (I) As to booty of war, see 3 and 4 Vict., c. 65, s. 22. (II) As to prize, see 27 and 28 Vict., c. 25. (III) As to prize in Scotland transferred to English Admiralty Court, see 6 Geo. IV., c. 120. (IV) As to capture of property from pirates, see 13 and 14 Vict., c. 26. (V) As to salvage, see 17 and 18 Vict., c. 104, part 8; 24 and 25 Vict., c. 10, s. 9. (VI) As to claims for equipping, &c., ships, for damages to cargo or by ship, and as to wages of seamen, ownership, earnings, mortgages, sale and transfer of ships, see 24 and 25 Vict., c. 10. (VII) As to offences against and ships detained under Foreign Enlistment Act, see 33 and 34 Vict., c. 90.

As to jurisdiction of Admiralty and Vice Admiralty Courts, on seizure and disposal of vessels engaged in slave trade, and of slaves and constitution, and powers of mixed Courts and Commissions under treaties, see 36 and 37 Vict., c. 88.

As to jurisdiction of Vice Admiralty Court at Eden, and Consuls in East Africa, see 36 and 37 Vict., c. 59.

As to Admiralty Court, is a court of record, and effect of decrees of Court, see 24 and 25 Vict., c. 10.

As to appeal from Court to Privy Council, see 2 and 3 Will. IV., c. 92; 24 and 25 Vict., c. 10; 27 and 28 Vict., c. 25; 33 and 34 Vict., c. 90, s. 27.

As to Dean of Arches to sit for Judge of Court in certain cases, see 3 and 4 Vict., c. 65.

As to Judge of Court of Probate, also Judge of the Admiralty Court, see 20 and 21 Vict., c. 77, s. 10.

As to Barristers and Attorneys allowed to practice in Court, see 22 and 23 Vict., c. 6.

As to practice and procedure in Court, examination of witnesses before Court, &c., see 3 and 4 Vict., c. 65; 24 and 25 Vict., c. 10; 27 and 28 Vict., c. 25.

As to amount and payment by stamps of fees in Court and annual amount of receipts and expenditure, see 30 and 31 Vict., c. 122; 32 and 33 Vict., c. 91.

As to Registrar, Examiner, and officers in Court, see 3 and 4 Vict., c. 66; 6 and 7 Vict., c. 38; 17 and 18 Vict., c. 78; 17 and 18 Vict., c. 94; 22 Vict., c. 26; 24 and 25 Vict., c. 10; 32 and 33 Vict., c. 91.

As to Commissioners for taking of oaths and affidavits in Court, see 17 and 18 Vict., c. 78.

As to transfer to Court of causes from County Court, see 31 and 32 Vict., c. 71, ss. 6-7.

As to bail given in Admiralty Court, good in Court of Appeal, see 24 and 25 Vict., c. 10, s. 33.

As to County Court districts in Admiralty cases, see 31 and 32 Vict., c. 71.

As to appointment of assessors in Admiralty cases, see 31 and 32 Vict., c. 71; 32 and 33 Vict., c. 51.

As to jurisdiction of County Court in Admiralty cases, see 31 and 32 Vict., c. 71; 32 and 33 Vict., c. 51.

As to removal of proceedings in County Court to Admiralty or Cinque Port Court, see 31 and 32 Vict., c. 71.

As to procedure on appeal from County Court in Admiralty cases, see 31 and 32 Vict., c. 71.

As to process of County Court in Admiralty matters, see 31 and 32 Vict., c. 71.

As to nautical assessors in Admiralty cases, see 31 and 32 Vict., c. 71.

As to taking of evidence in County Court in Admiralty cases, see 31 and 32 Vict., c. 71.

As to general rules of County Court in Admiralty cases, see 31 and 32 Vict., c. 71.

As to general rules of County Court in Admiralty cases by assessor of Court of Passage in Liverpool, see 32 and 33 Vict., c. 51, s. 6.

As to effect and execution of decree of County Court in Admiralty cases, see 31 and 32 Vict., c. 71.

As to registry of judgments of County Court in Admiralty cases, see 31 and 32 Vict., c. 71.

As to amount of costs limited in case of Admiralty Court, or inferior Court, which may be brought in County Court, see 31 and 32 Vict., c. 71.

As to costs in proceedings by or against Admiralty, see 28 and 29 Vict., c. 124; 31 and 32 Vict., c. 78.

As to appeals to judicial committee from Ecclesiastical and Admiralty Courts, see 2 and 3 Will. IV., c. 92; 3 and 4 Vict., c. 65, s. 7; 3 and 4 Vict., c. 66, s. 4; 6 and 7 Vict., c. 38; 24 and 25 Vict., c. 10; 27 and 28 Vict., c. 25.

As to appeals to judicial committee from Admiralty Court and making of general orders by judicial committee in prize causes, see 27 and 28 Vict., c. 25.

As to establishment of district registry of High Court of Admiralty in Liverpool, see 33 and 34 Vict., c. 45.

As to rewards to royal navy, for attacking pirates, and inquiry and returns by Admiralty and Vice-Admiralty Courts, and salvage on British property in possession of piracy, see 13 and 14 Vict., c. 26.

As to regulations as to pre-emption of prize by Admiralty, prize salvage, prize bounty, ransom of ship, &c., and convoy and orders in Council respecting prize, see 27 and 28 Vict., c. 25.

As to regulations as to sending papers to Admiralty, taking effects out of prize, breaking bulk in, embezzling, ill-using persons on board ship, seized, taking, or restoring by collusion, &c., see 29 and 30 Vict., c. 109, s. 40.

As to illegal prize, dealings with and restoration of prize by Court of Admiralty, see 33 and 34 Vict., c. 90, s. 14, &c.

As to appointment of commissioner to administer oaths in Admiralty Court, see 17 and 18 Vict., c. 78, s. 4.

As to salary and pension to Judge of Vice-Admiralty Prize Court, see 27 and 28 Vict., c. 25, s. 11.

#### NOTE 10.—The Court of Probate.—(§ 3, p. 2.)

The Court of Probate was a tribunal recently established by 20 and 21 Vict., c. 77, amended by 21 and 22 Vict., c. 95, to which the jurisdiction of the Ecclesiastical Courts in testamentary matters was transferred. Its jurisdiction will be found in the note, "The Jurisdiction of the Court of Probate."

The principal Statutes in connection with the Court of Probate are as follows:—

As to transfer to Crown of testamentary jurisdiction of Ecclesiastical Courts, see 20 and 21 Vict., c. 77.

As to jurisdiction and powers of Court, see 20 and 21 Vict., c. 77; 21 and 22 Vict., c. 95.

As to Judge, Registrars, District Registrars, and Officers of Court, see 20 and 21 Vict., c. 77; 21 and 22 Vict., c. 95.

As to pension of Judge of Court, see 34 and 35 Vict., c. 91, s. 1.

As to taking oaths and affidavits for Court in and out of England, and Commissioners therefor, see 20 and 21 Vict., c. 77, s. 27, &c.; 21 and 22 Vict., c. 95, s. 32, &c.

As to practice and procedure in Court and appeal from Court and examination of witnesses in Court, see 20 and 21 Vict., c. 77; 26 and 27 Vict., c. 57.

As to remittal of cause to County Court, see 20 and 21 Vict., c. 77; ss. 55-60; 21 and 22 Vict., c. 95, s. 10, &c.

As to who to practice before Court, see 20 and 21 Vict., c. 77; 21 and 22 Vict., c. 95.

As to fees in Court payable by stamps and account, and application thereof, see 20 and 21 Vict., c. 77; 21 and 22 Vict., c. 95; 30 and 31 Vict., c. 122.

As to fees in Court payable by stamps in district registries, see 23 and 24 Vict., c. 111, s. 23.

As to sittings of Judge of Court in Chambers, see 21 and 22 Vict., c. 95.

As to Judge of Court, also Judge of the Admiralty Court, see 20 and 21 Vict., c. 77, s. 10.

As to a building for Court of Probate, see 22 and 23 Vict., c. 16; 25 and 26 Vict., c. 74.

As to grant of administration through registrar of County Court, where estate does not exceed £100, see 36 and 37 Vict., c. 62.

**NOTE 11.—The Court for Divorce and Matrimonial Causes.—**  
(§ 3, p. 2.)

This Court was a tribunal established in January, 1858, by 20 and 21 Vict., c. 85, amended by the acts which will be found stated below. Its jurisdiction will be found in the note, "The Jurisdiction of the Court of Divorce and Matrimonial Causes."

The principal statutes in connection with this Court are as follows:—

As to constitution and jurisdiction and sittings of Court and Judges, Officers, &c., of Court, see 20 and 21 Vict., c. 85; 22 and 23 Vict., c. 61; 23 and 24 Vict., c. 144.

As to pension of Judge of Court, see 34 and 35 Vict., c. 91, s. 1.

As to transfer to court of jurisdiction of all Ecclesiastical Courts or persons in matters matrimonial, see 20 and 21 Vict., c. 85.

As to powers of court and appeal from judge ordinary of court, see 20 and 21 Vict., c. 85; 23 and 24 Vict., c. 144.

As to powers of Court and appeal from judge sitting in chambers, see 21 and 22 Vict., c. 108.

As to practitioners before Court, see 20 and 21 Vict., c. 85; 21 and 22 Vict., c. 108.

As to proceedings in Court for judicial separation and effect thereof, see 20 and 21 Vict., c. 85; 21 and 22 Vict., c. 108.

As to proceedings in Court for judicial restitution of conjugal rights, see 20 and 21 Vict., c. 85; 21 and 22 Vict., c. 108.

As to proceedings in Court for judicial and effect of dissolution of marriage and damages from adulterer, and intervention of Queen's Proctor and others, see 20 and 21 Vict., c. 85; 21 and 22 Vict., c. 108; 23 and 24 Vict., c. 144; 29 and 30 Vict., c. 32.

As to practice and proceedings in Court, see 20 and 21 Vict., c. 85; 21 and 22 Vict., c. 108; 23 and 24 Vict., c. 144.

As to taking oaths and affidavits for Court, in and out of England, and Commissioners therefor, see 20 and 21 Vict., c. 85; 21 and 22 Vict., c. 108.

As to regulations as to alimony, see 20 and 21 Vict., c. 85; 29 and 30 Vict., c. 32.

As to orders by Court as to custody, maintenance, &c., of children of marriage, see 20 and 21 Vict., c. 85, s. 35; 22 and 23 Vict., c. 61.

As to orders by Court as to settlement of property, see 20 and 21 Vict., c. 85, s. 45; 22 and 23 Vict., c. 61; 23 and 24 Vict., c. 144.

As to evidence in Court and attendance, &c., and examination of witnesses, see 20 and 21 Vict., c. 85.

As to competency of husband or wife to give evidence in Court, see 20 and 21 Vict., c. 85, s. 43; 22 and 23 Vict., c. 61; 32 and 33 Vict., c. 68.

As to fees in Court payable by stamps, see 20 and 21 Vict., c. 85, ss. 54, 60, 61.

As to powers of Registrars of Court in Chambers, see 21 and 22 Vict., c. 108.

As to appeal from Court to House of Lords, see 31 and 32 Vict., c. 77.

As to taxation of costs in Court, see 21 and 22 Vict., c. 108.

As to obtaining declaration of legitimacy or of a marriage being valid, or of being a British subject, from Court with appeal to House of Lords, see 20 and 21 Vict., c. 85; 22 and 23 Vict., c. 61.

As to marriage of divorced persons, see 20 and 21 Vict., c. 85, s. 57, c. 68, and 32 Vict., c. 77.

As to clergymen not bound to solemnize marriage of guilty party to divorce, see 20 and 21 Vict., c. 85, s. 57.

As to proceedings for and effect of nullity of marriage, and intervention of Queen's Proctor and others, see 36 and 37 Vict., c. 31.

As to when husband and wife of parties competent to be witnesses in any proceeding in consequence of adultery, see 32 and 33 Vict., c. 68, s. 3.

**NOTE 12.—The London Court of Bankruptcy.—(§ 3, p. 2)**

The principal Statutes in connection with this Court are as follows:—

As to London and Country Courts, comptroller in bankruptcy, registrars and inferior officers, solicitors practising before Court, appeal from and execution of process and decrees of Court in England, Scotland, or Ireland, and general rules of Court, see 32 and 33 Vict., c. 71.

As to transfer of funds of Court to Commissioners for Reduction of National Debt, and payment of salaries and pension of officers of old Court, see 32 and 33 Vict., c. 91.

As to salaries of Judge charged on Consolidated Fund, and of officers on votes, see 32 and 33 Vict., c. 71: 32 and 33 Vict., c. 91.

As to pension to officers of superior Courts or in Bankruptcy or Lunacy, see 29 and 30 Vict., c. 68; 32 and 33 Vict., c. 91.

As to appointment of officers of Court, see 32 and 33 Vict., c. 71; 32 and 33 Vict., c. 91.

As to winding up of insolvency business in London and County Courts, see 32 and 33 Vict., c. 83.

As to fees and stamps in Court, and annual account of receipts and expenditure, see 32 and 33 Vict., c. 71; 32 and 33 Vict., c. 91.

As to power of Court to order prosecution of Bankrupt, see 32 and 33 Vict., c. 62, s. 16, &c.

As to Courts in Scotland and Ireland, and Colonies auxiliary to each other, see 32 and 33 Vict., c. 71, s. 74.

As to arrest of debtor about to abscond, &c., pending proceedings in Bankruptcy, see 32 and 33 Vict., c. 71 s. 86; 33 and 34 Vict., c. 76.

As to jurisdiction of Chancery Judge in Chambers, District Courts of Bankruptcy, and County Court, as to Charities, see 16 and 17 Vict., c. 137; 23 and 24 Vict., c. 136.

As to decree and order of Bankruptcy Court to operate as judgment, see 32 and 33 Vict., c. 71.

As to limitations of time for impeachment of sale by bankrupt, see 2 and 3 Vict., c. 11, s. 13.

**NOTE 13.—The Judges.—(§ 5, p. 2)**

The word judge is derived from the Latin *judex*, through the French *juge*. The Roman *judex* answered nearly to a judge sitting at Nisi Prius; *judices* resembling our special jurymen.

The principal statutes relating to the judges are as follows:—

As to the commencement, accruer, and payment of salaries of judges, see 35 and 36 Vict., c. 61.

As to duties of the judges of the Superior Courts, see 20 Edw. III., c. 1.

As to holding office during good behaviour, but removable on address from Parliament, see 12 and 13 Will. III., c. 2; 1 Geo. III., c. 23.

As to salaries, fees, and pensions of judges of Common Law Courts, see 1 Geo. III., c. 23; 39 Geo. III., c. 110, s. 7; 53 Geo. III., c. 153; 6 Geo. IV., c. 82; 6 Geo. IV., c. 83; 6 Geo. IV., c. 84; 11 Geo. IV., and 1 Will. IV., c. 70; 2 and 3 Will. IV., c. 116; 14 and 15 Vict., c. 41; 35 and 36 Vict., c. 51.

As to appointment of judges as members of Judicial Committee of Privy Council, see 34 and 35 Vict., c. 91.

As to powers of judges to make rules and alter forms of proceedings, see 11 Geo. IV., and 1 Will. IV., c. 70; 1 and 2 Will. IV., c. 58; 2 and 3 Will. IV., c. 39; 3 and 4 Will. IV., c. 42; 15 and 16 Vict., c. 76, s. 223; 17 and 18 Vict., c. 125, s. 97; 19 and 20 Vict., c. 97; 23 and 24 Vict., c. 128.

As to powers of judges to make rules as to Irish and Scotch judgments, and security for costs, see 31 and 32 Vict., c. 54.

As to powers of judges to make rules as to arrest of defendant in action, see 32 and 33 Vict., c. 62.

As to powers of judges to make rules for carrying out Juries Act, see 33 and 34 Vict., c. 77, s. 24.

As to power of existing judges to make rules for regulation of sittings of, circuits, procedure, &c., in Supreme Court of Judicature, see 36 and 37 Vict. c. 96, s. 63.

As to making of ordinances by Guild or Corporation against common profit of people, and approval of Corporation by Chancellor and Judges, see 19 Hen. VII., c. 7.

As to effect of demise of the Crown on Judges, see 1 Geo. III., c. 23.

As to trial by judges at Nisi Prius, see 13 Edwd. I., c. 30; 27 Edwd. I., c. 4; 12 Edwd. II., c. 3; 2 Edwd. III., c. 16; 14 Edwd. III., stat. I., c. 16; 42 Edwd. III., c. 11; 18 Eliz., c. 12; 12 Geo. I., c. 31; 1 Geo. IV., c. 21; 15 and 16 Vict., c. 76; 17 and 18 Vict., c. 125; 33 and 34 Vict., c. 6, a. 8.

As to attendance at Quarter Sessions of the Judges when Justices of the Peace, see 12 Ric. II., c. 10.

As to form of oath by judges, see 31 and 32 Vict., c. 72; 34 and 35 Vict., a. 48, s. 2.

As to places in Parliament of certain judges, see 31 Hen. VIII., c. 10.

As to constitution of Supreme Court of Judicature and transfer to such Court of Judges and jurisdiction of Existing Courts (on 2nd November, 1874), see 36 and 37 Vict., c. 66; see also notes, "The Lord Chancellor;" "The Master of the Rolls;" "The High Court of Chancery of England;" "The Court of Queen's Bench;" "The Court of Common Pleas;" "The Court of Exchequer;" "The High Court of Admiralty;" "The Court of Probate;" "The Court for Divorce and Matrimonial Causes;" "The London Court of Bankruptcy."

#### NOTE 14.—The Lord Chancellor.—(§ 5, p. 2.)

The word chancellor (Latin cancellarius) is derived either (i) from the act of cancelling the King's letters patent when granted contrary to law, or (ii) from the little bars (cancelli) for fencing off the multitude from the recess or chancel, in which sat the door-keeper or usher of the Court of Justice.—[Cam. Ch. l.]

The office has existed in England from the most remote antiquity. The almost fabulous British King Arthur is said to have appointed a Chancellor.—[Mirror of Justices.]

The original duty of the Chancellor was to frame writs for the King—appealed to in early times for justice, grants of dignities, of offices, and of lands made by the King. These grants were verified by the Great Seal, the custody of which was given to the Chancellor. The Chancellor was at first his Confessor, and hence became the "keeper of the King's conscience."

In addition to the Common Law and Equitable Jurisdiction obtained by ambitious Chancellors, he can grant a writ of Habeas Corpus either in term or in vacation (Crawley's case 2 Swanst. 6), and writs of prohibitions (per Lord Redesdale 2 sch. and Lef. 136; see 4 Inst 81; 2 P. Wms. 202), and writ of *ne exeat regno* (De Carriere v. Calonne 4 Ves 577. See Beames writ *ne exeat regno* and Beames Chancery orders, p. 39), and writ de coronatore eligendo (F. N. B. 163. 1 Black 347.) He also decides in the Court of Chancery questions arising as to the validity of the election (re Coroner Co. Stafford 2 Russ. 476), and he may remove him for sufficient reasons from his office (*ex parte Parnell* 1 Jac. and W. 451; *ex parte Pasley* 3 Drur. and War. 34.)

He is *ex officio* Prolocutor or Speaker of the House of Lords whether he be a peer or not. Without any commission or express authority for the purpose he always presides there when present. This privilege is said to belong to him by prescription, and he has enjoyed it many centuries, although in the reigns of Richard I, John, and Henry III (within time of legal memory) it was exercised by the Chief Justiciary. The Crown may, by commission, name others to preside in the House of Lords in the absence of the Chancellor; and no Speaker appointed by the Crown being present, the Lords, of their own authority, may choose one of themselves to Act as Speaker—which they have often done of late years in hearing appeals, but all these Speakers are immediately superseded when the Chancellor enters the House. (Camp. L. C. i. 16). Lord Chief Baron Gilbert suggests that the Chancellor sits on the Woolsack as Steward of the King's Court Baron, and draws an ingenious but fanciful parallel between the Court Baron of a Manor and the House of Lords (Gilb Ev. 42). By an old standing order of the House of Lords his constant attendance there is required. By 25 Edwd. III., c. 2, to stay him in the execution of his office is high treason. If a commoner he cannot speak or vote. From early times he was

usually employed to address the two Houses on the meeting of the new Parliament in the presence of the King. On the trial of a peer for treason or felony, the Lord High Steward presides, but he has generally been nominated to that office.

Since the institution of Justices of the Peace in the reign of Edw. III., he has had the power of appointing and removing them (1 Edw. III., stat. 2, c. 16; 28 Hen. VI., c. II.) He, however, generally takes the advice of the Lord Lieutenant or *custos rotarum* in each county, but when any extraordinary case arises, it is his duty and his practice to act upon his own judgment.

See also notes, "Position of Lord Chancellor;" "Precedence;" "Salary of the Lord Chancellor;" "The Oaths to be taken by the Lord Chancellor."

The principal statutes referring to the Lord Chancellor are as follows:—

As to his pension, see 2 and 3 Will. IV., c. 111; 32 and 33 Vict., c. 91.

As to his purse bearer and secretary of presentations, see 3 and 4 Will. IV., c. 84; 32 and 33 Vict., c. 91.

As to salaries and fees of his secretaries and officers, see 15 and 16 Vict., c. 87; 32 and 33 Vict., c. 91.

As to salary and payment of his fees to suitors' funds, see 14 and 15 Vict., c. 83; 15 and 16 Vict., c. 87; 32 and 33 Vict., c. 91.

As to delivery by Lord Chancellor of judgment after resignation, see 15 and 16 Vict., c. 80.

As to sale of Advowson in gift of Lord Chancellor and augmentation out of proceeds, see 26 and 27 Vict., c. 120.

As to appointment by Lord Chancellor of Commissioners to enquire into gifts to Charities, see 43 Eliz., c. 4.

As to ordinances by Corporation, making of, against common profit of people, &c., and approval of by Lord Chancellor, see 19 Hen. VII., c. 7.

As to the place in Parliament of the Lord Chancellor, see 31 Hen. VIII., c. 10.

As to nomination of Sheriffs by Lord Chancellor and others on the morrow of St. Martin, 9 Edw. II., stat. 2; 14 Edward III., stat. 1, c. 7; 21 Hen. VIII., c. 20; 24 Geo. II., c. 48, s. 12.

See also notes on "Judges," "The High Court of Chancery of England," "Great Seal of the United Kingdom," "Lunatics," "Sheriff."

#### NOTE 15.—The Lord Chief Justice of England — (§ 5, p. 2)

The office of Chief Justice, or Chief Justiciar, was introduced into England by William the Conqueror, from Normandy, where it had long existed. Of the two names, "Justice" and "Justiciar," we have this account by Spelman: "*Justitia* a *Justitiarius*. Prior vox in juris nostri formula, solummodo videtur usitata, usque ad statum Henrici 3. altera jam se efferente, hæc paulatim disparuit: sed inde hodie in vernaculo et juris annalibus Gallico-Normanice 'a' vel '*un Justice*' dicimus, non '*Justicier*.'" In Scotland, where this office was introduced, along with almost every other which existed in England under the Norman King, the word *Justitiarius* prevailed, and hence we now have the "Court of Justiciary." (See Campbell's "Lives of the Chancellors, vol. 1. p. 5.) The functions of such an officer would have ill accorded with the notions of our Anglo-Saxon ancestors, who had a great antipathy to centralisation, and prided themselves upon enjoying the rights and the advantages of self-government. The shires being parcelled into hundreds, and other sub-divisions, each of these had a court, in which suits, both civil and criminal, might be commenced. A more extensive jurisdiction was exercised by the County Court, a tribunal of high dignity, over which the Bishop, and the Earl, or Alderman, presided jointly. Cases of importance and difficulty were occasionally brought by appeal before the Witenagemote, and here they were disposed of by the voice of the majority of those who constituted this assembly. We do find, in the Anglo-Saxon records, a notice of "*Totius Angliæ Aldermannus*," but such a creation seems to have taken place only on rare emergencies, and we have no certain account of the duties intrusted to the person so designated. (Dugd. Or. Jur. ch. VII., Mad. Ex. ch. 1, Spel. Gloss. "Justitia," Lord Coke's 2nd Inst., ch. VII.) In Normandy the interference of the supreme government was much more active than in England, and there existed an officer called Chief Justiciar, who superintended the



administration of justice over the whole dukedom, and on whom, according to the manners of the age, both military and civil powers of great magnitude were conferred. It is curious to observe that, notwithstanding the sweeping change of laws and institution introduced at the conquest the characteristic difference between Frenchmen and Englishmen, in the management of local affairs, still exists after the lapse of so many centuries; and that while with us parish vestries, town councils, and county sessions, are the organs of the petty confederated republics into which England is parcelled out,—in France, whether the form of government be nominally monarchical or republican, no one can alter the direction of a road, build a bridge, or open a mine, without the authority of the “*Ministre des Ponts et Chaussées*.” In Ireland, there being much more Celtic than Anglo-Saxon blood, no self reliance is felt, and a disposition prevails to throw everything upon the government.

Before William had entirely completed his subjugations of England, eager to introduce into it the laws and institutions of his own country, so favourable to princely prerogative,—while he separated the civil and ecclesiastical jurisdiction, and confined the County Court (from which the Bishop was banished) to the cognizance of petty suits,—preparatory to the establishment of the feudal system in its utmost rigour, he constituted the office of Chief Justiciar. His plan was to have a grand central tribunal for the whole realm, which should not only be a Court of Appeal, but in which all causes of importance should originate and be finally decided. This was afterwards called *Curia Regis*, and sometimes *Aula Regis*, because it assembled in the hall of the King's palace. The great officers of state, the Constable, the Mareschal, the Seneschal, the Chamberlain, and the Treasurer, were the judges, and over them presided the grand Justiciar. “Next to the King himself, he was chief in power and authority, and when the King was beyond seas (which frequently happened), he governed the realm like a viceroy.” (Madd. Exch. XI., where it is said, “he was wont to be styled *Justicia Regis*, *Justiciarius Regis*, and absolutely *Justicia* or *Justiciarius*; afterwards he was sometimes styled *Justiciarius Regis Angliæ*, probably to distinguish him from the King's Justiciar of Ireland, Normandy,” &c.) He was at all times the guardian of the public peace as Coroner-General (the Chief Justice of the King's Bench is still Chief Coroner of England), and he likewise had a control over the finances of the kingdom. (It is supposed to be a remnant of this power, that, upon the sudden death or resignation of the Chancellor of the Exchequer, the Chief Justice of the King's Bench did the formal duties of the office till a successor is appointed). In rank he had precedence of all the nobility, and his power was greater than that of all other magistrates. (“*Dignitate omnes regni proceres, potestate omnes superabat magistratus.*”—*Spel. Gloss*, p. 331.)

The administration of justice continued nearly on the same footing for eight reigns, extending over rather more than two centuries. Although, during the whole of this period, the *Aula Regis* was preserved, yet, for convenience, causes according to their different natures, were gradually assigned to different committees of it,—to which may be traced the Court of King's Bench, the Court of Common Pleas, the Court of Exchequer, and the Court of Chancery. A distinct tribunal for civil actions was rendered necessary, and was fixed at Westminster by the enactment of *Magna Charta*—“*Communia placita non sequantur curiam nostram, sed teneantur in aliquo certo loco*;” but the suitors in other causes were long after obliged to resort alternately to York, Winchester, Gloucester, and other towns in which the King sojourned at different seasons of the year. At last a great legislator modelled our judicial institutions almost exactly in the fashion in which, after a lapse of six centuries, they presented themselves at the establishment of the Supreme Court of Judicature, showing a fixity unexampled in the history of any other nation. The Chief Justiciar was then considerably lowered in rank and power, but the identity of the office is to be distinctly traced.—[*Camp. Lives of the Chief Justices*, vol. 1, pp. 1-3.]

#### NOTE 16.—The Master of the Rolls.—(§ 5, p. 2.)

The judicial duties of the Court of Equity had been long in some measure shared by an officer of high rank, called the Master of the Rolls, originally appointed only for the superintendence of the writs and records appertaining to its common law department (4 Inst. 82), but accustomed also to sit on the

Equity side as a separate though subordinate judge. The Master of the Rolls was properly the chief of a body of officers, called the *Masters in Chancery*, of whom there had been until recently, ten others, including the Accountant General (4 Inst. 82; Smith's Commonw. bk. II. c. 12; 3 and 4 Will. IV., c. 94; 10 and 11 Vict. 60, 97). But subsequently by 15 and 16 Vict. c. 80, s. 69, these offices were abolished with certain temporary reservations (17 and 18 Vict. c. 100; 23 and 24 Vict. c. 149, s. 1), and with a reservation also of the rights, duties, and privileges of the *Accountant General*. But now by 35 and 36 Vict. c. 44, s. 4, the office of Accountant General is abolished, and the Paymaster General exercises the powers and authorities of the former office. Concerning the authority of the Master of the Rolls to hear and determine causes, and his general power in the Court of Chancery, there were formerly divers questions and disputes very warmly agitated: to quiet which, it was declared by 3 George II, c. 30, that all orders and decrees made by him, except such as by the course of the Court were appropriated to the Great Seal alone, shall be deemed valid, subject, nevertheless, to be discharged or altered by the Lord Chancellor, and so as they shall not be enrolled till the same are signed by his lordship (3 Bl. Comm. 450). And by the statute, 3 and 4 Will. IV., c. 94, s. 24, the Master of the Rolls was specially directed to hear motions, pleas, and demurrers as well as causes generally.

The principal statutes relating to the Master of the Rolls, are as follows:—

As to authority of orders, and decrees of Master of the Rolls, see 3 Geo. II, c. 30. As to pension of the Master of Rolls, see 39 Geo. III., c. 110; 53 Geo. III., c. 153; 6 Geo. IV., c. 84; 32 and 33 Vict., c. 91.

As to salary of Master of the Rolls, see 7 Will IV., and 1 Vict., c. 46; 14 and 15 Vict., c. 83; 32 and 33 Vict., c. 91.

As to jurisdiction of Master of the Rolls, see 3 and 4 Will. IV., c. 94.

As to lease of estate of Master of the Rolls for Judges Chambers, see 6 and 7 Will. IV., c. 49; 7 Will IV., and 1 Vict., c. 46.

As to estate of Master of the Rolls vested in Crown, and as to regulation of fees and officers of Master of Rolls, see 7 Will IV., and 1 Vict., c. 46; 32 and 33 Vict., c. 91.

As to superintendence of public records by Master of the Rolls, see 1 and 2 Vict., c. 94.

See also notes on "Judges," "High Court of Chancery of England;" "the salary of the Master of the Rolls;" "the pension of the Master of the Rolls."

#### NOTE 17.—The Lord Chief Justice of the Common Pleas.—

(§ 5, p. 2.)

The salary and pension of this Judge will be found stated in notes thereon *infra*.

#### NOTE 18.—The Lord Chief Baron of the Exchequer.—(§ 5, p. 2.)

The salary and pension of this Judge will be found stated in notes thereon *infra*.

#### NOTE 19.—The several Vice Chancellors of the High Court of Chancery.—(§ 5, p. 2.)

The vast increase of business, the progress of which had been more particularly marked during the last half of the century, having at length become such as to render the antient force of the Court of Chancery wholly inadequate to the labours it had to perform, it was found necessary in the year 1813 (53 Geo. III, c. 24), to appoint another assistant under the title of Vice Chancellor of England; and after the transfer to that Court in 1841 of the Equity business of the Exchequer, two more Vice Chancellors were added to its judicial list (5 Vict. c. 5, s. 19.) As to one of these Vice Chancellorships, the Act provides that nothing therein contained shall authorise the appointment of a successor. The appointment of a successor, however, was authorised by 14 and 15 Vict. c. 4, and that of another successor by 15 and 16 Vict. c. 80, ss. 52-58 (Step Black III, 426.)

**NOTE 20.—The Judge of the High Court of Admiralty.—**  
(§ 5, p. 2.)

This Judge sat properly as the Deputy of the Lord High Admiral of England, while there was an officer of that description in use. By 20 and 21 Vict., c. 77, s. 10, it is provided that upon the next vacancy in the office of Judge of the Admiralty Court or of Judge of the Court of Probate, the two be united if Her Majesty so thinks fit. And by 21 and 22 Vict., c. 95, s. 1, it is provided that the Judge of the Admiralty Court and the Judge of the Probate Court may sit for one another either in open Court or in Chambers.

**NOTE 21.—Except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.—**(§ 5, p. 2.)

By sec. 6, the first ordinary Judges are to be :—

1. The two Lords Justices of Appeal in Chancery.
2. The four salaried Judges of the Judicial Committee of the Privy Council.
3. Such three other persons as Her Majesty may be pleased to appoint by Letters Patent.

**NOTE 22.—Letters Patent.—**(§ 5, p. 3.)

Letters Patent or Letters overt (*litteræ patentēs*) are writings of the Queen sealed with the Great Seal of England. They are so-called because they are not sealed up, but open with the seal affixed and ready to be shown for confirmation of the authority thereby given. The Great Seal is usually pendant at the bottom and the letters are for the most part directed or addressed by the Sovereign to all subjects of the realm. And therein they differ from certain other letters of the Sovereign sealed also with the Great Seal, but directed to particular persons and for particular purposes; which, therefore, not being proper for public inspection, are closed up and sealed on the outside, and are, thereupon, called writs *close*, *litteræ clausæ*, and are recorded in the *close rolls*. Grants or letters patent must first pass by *bill*; which is prepared by the Attorney and Solicitor General, in consequence of a warrant from the Crown; and is then signed, that is, superscribed at the top with the Sovereign's own *sign manual*, and sealed with the *privy signet*, which is always in the custody of the principal Secretary of State; and then sometimes it immediately passes under the Great Seal, in which case the patent is subscribed in these words, *per ipsam reginam* (2 Rep. 17 b.) Otherwise the course is to carry an extract of the bill to the keeper of the *privy seal*, who makes out a writ or warrant thereupon to the Chancery; so that the sign manual is the warrant to the *privy seal*, and the *privy seal* is the warrant to the Great Seal; and in this last case the patent is subscribed, *per breve de privato sigillo* (2 Rep. 17 b.; 2 Inst. 555). But there are some grants which only pass through certain offices as the Admiralty or Treasury, in consequence of a *sign manual*, without the confirmation of either the *signet*, the *great* or the *privy seal* (see 3 and 4 Edw. VI., c. 4; 13 Eliz., c. 6).

**NOTE 23.—Precedence.—**(§ 5, p. 3.)

The precedence of the Lord Chancellor is fixed by 31 Henry VIII., c. 10, s. 4, as follows :—And forasmuche as suche other peonage wch nowe have and hereafter shall happen to have other great offices of the realme, that is to saye, the offices of the Lorde Chauncellour, the Lorde Treasurer, the Lorde President of the Kinge most Honorable Counsell, the Lorde Privy Seale, the Great Chamberleyn of Englande, the Constable of Englande, the Marciall of Englande, the Lorde Admyrall, the Graunde Maister, or Lorde Stewarde of the Kinge most Honorable Housholde, the Kinges Chamberleyn, and the Kinges Secretarie, hathe not heretofore bene appointed and ordered for the placinge and sittinge in the Kinge moste Highe Courte of Parliament, by reason of their offices, it is therefore nowe ordeyned and enacted by thautoritie aforesaide, that the Lorde Chauncellour, the Lorde Treasurer, the Lorde President of the Kinge Counsell, and the Lorde Privy Seale, beinge of the degre of Barons of the Parliament, or above, shall sytt and be placed, aswell in this p'sent Parliament as in all other

Parliaments hereafter, to be holden, on the lyfte syde of the saide Parliament Chamber on the higher parte of the fourme of the same aide above all Dukes, excepte onlie suche as shall happen to be the Kinges some, the Kinges brother, the Kinges uncle, the Kinges nephewe, or the Kinges brothers or sisters sonnes.

The Chief Justice of the Queen's Bench, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, appear in this list in the above order, next after Barons' eldest sons. They are entitled to this rank by Letters Patent 9, 10, and 14, Jac. 1. (see Seld. Tit. of Hon. II., 5, 46). Next following these Judges are—The Two Lords Justices of Appeal in Chancery by 14 and 15 Vict., c. 83; then the Three Vice-Chancellors by 53 Geo. III., c. 24, and 5 Vict., c. 5, s. 25, and then the Pusine Judges and Barons.

#### NOTE 24.—Superior Courts of Common Law.—(§ 5, p. 3.)

The principal statutes relating to the Superior Courts of Common Law at Westminster, are as follows:—

As to practice, pleadings, and proceedings in Court, see 4 and 5 Ann. c. 3; 1 Will. IV., c. 7; 3 and 4 Will. IV., c. 42; 15 and 16 Vict., c. 76, s. 27; 17 and 18 Vict., c. 125; 23 and 24 Vict., c. 126.

As to appeal from Court to Exchequer Chambers, see 11 Geo. IV., and 1 Will. IV., c. 70.

As to abolition of real actions in Court, see 3 and 4 Will. IV., c. 27, s. 36; 23 and 24 Vict., c. 126, s. 28.

As to fees of court, and accounts by officers of court, and compensations on abolition of office, see 3 Geo. IV., c. 69; 11 Geo. IV., and 1 Will. IV., c. 58; 1 and 2 Will. IV., c. 35; 7 Will. IV., and 1 Vict., c. 30; 15 and 16 Vict., c. 73; 28 and 29 Vict., c. 45; 29 and 30 Vict., c. 101; 30 and 31 Vict., c. 122; 32 and 33 Vict., c. 18.

As to payment of fees of Court by stamps, see 28 and 29 Vict., c. 45.

As to annual account of fees and expenditure of Superior Court, see 29 and 30 Vict., c. 101; 30 and 31 Vict., c. 122; 32 and 33 Vict., c. 91.

As to times of Sitting of Court, see 11 Geo. IV., and 1 Will. IV., c. 70; 17 and 18 Vict., c. 125, s. 95.

As to power of Court to sit in two divisions at one time in Banc, see 33 and 34 Vict., c. 6.

As to jurisdiction of Court extended to Cheshire and Wales, see 11 Geo. IV., and 1 Will. IV., c. 70.

As to examination of witnesses for Court abroad upon interrogatories and otherwise, see 1 Will. IV., c. 22.

As to special case in Court, see 3 and 4 Will. IV., c. 42; 17 and 18 Vict., c. 125.

As to abolition of offices in Court, see 7 Will. IV., and 1 Vict., c. 30; 8 and 9 Vict., c. 34.

As to payment of money into Court, see 7 Will. IV., and 1 Vict., c. 30; 15 and 16 Vict., c. 76, ss. 70-3; 23 and 24 Vict., c. 126.

As to power of judge of one court to make, on circuit, order in any cause as if in own court, see 1 Geo. IV., c. 55.

As to power of Justices of Assize to take inquisitions of all pleas in Courts of Queen's Bench, Common Pleas, or Exchequer, see 13 Edw. I. (*Stat. West. 2*), c. 30; 2 and 3 Vict., c. 22.

As to power of judge of one court, as to proceedings in other courts, and as to certiorari, habeas corpus, bail, estreats, crown debts, &c., see 1 and 2 Vict., c. 45.

As to power of judge of one court to sit and assist in another court, see 33 and 34 Vict., c. 6.

As to sealing of writs of Court, see 8 and 9 Vict., c. 34.

As to number, appointment, salaries, &c., of associates and officers in court, and prohibition on taking gratuities, paying money, for appointment, &c., see 15 and 16 Vict., c. 73; 17 and 18 Vict., c. 94; 22 Vict., c. 26; 30 and 31 Vict., c. 122.

As to Clerk of Assize not to be Counsel on Circuit, see 33 Hen. VIII., c. 24.

As to salary of Clerk of Assize in lieu of fees, both as Clerk of Assize,

- associate on circuit, and Clerk of the Crown, see 15 and 16 Vict., c. 73; 18 and 19 Vict., c. 126; 26 and 27 Vict., c. 122.
- As to qualification for office of Clerk of Assize, and regulation as to his fees, see 32 and 33 Vict., c. 89.
- As to pension to officers of Superior Courts, or in bankruptcy or lunacy, see 29 and 30 Vict., c. 68; 32 and 33 Vict., c. 91.
- As to trial of issues in court, without formal pleadings and proceedings thereon, see 15 and 16 Vict., c. 76, ss. 42-48.
- As to language and form of pleadings in Court, see 15 and 16 Vict., c. 76, ss. 49-91.
- As to use of English language in Court, and in writs, indictments, &c., see 27 Hen. VIII., c. 26; 4 Geo. II., c. 26; 5 Geo. II., c. 27.
- As to use of English language in Court, and pleadings, orders, &c., to be in common hand, see 6 Geo. II., c. 14.
- As to writ of Inquiry to assess damages before Sheriff, see 8 and 9 Will. III., c. 11; 3 and 4 Will. IV., c. 42, s. 16; 2 and 3 Vict., c. 16, s. 16.
- As to ascertainment of damages by Master of Court, instead of under writ of inquiry, see 15 and 16 Vict., c. 76, s. 94.
- As to notice of trial and countermand by Court, see 15 and 16 Vict., c. 76, ss. 97-101.
- As to trial of cause on plaintiff not proceeding in Court, see 15 and 16 Vict., c. 76, s. 101.
- As to trial of question of fact by judge of court, see 17 and 18 Vict., c. 125.
- As to interrogatories to Court, and examination of parties to action, see 17 and 18 Vict., c. 125.
- As to discrediting witnesses at trial before Court, cross-examination as to previous statement in writing, and examination of disputed handwriting, see 17 and 18 Vict., c. 125.
- As to rule for new trial in Court, or to enter a verdict or nonsuit, see 17 and 18 Vict., c. 125.
- As to inspection of documents or property by party, Jury, &c., in Court, see 17 and 18 Vict., c. 125.
- As to equitable pleas and replications in Court, see 17 and 18 Vict., c. 125, ss. 83-86.
- As to mode of appearance in Court, and judgment in default of, see 15 and 16 Vict., c. 76, ss. 27-33.
- As to Rules as to appearance of defendant in Court, see 13 Cha. II., st. 2, c. 2; 5 Geo. II., c. 27; 15 and 16 Vict., c. 76, ss. 24-33.
- As to officers of common law side of Court of Exchequer, see 2 and 3 Will. IV., c. 110.
- As to proceedings in Court in lieu of feigned issue, see 8 and 9 Vict., c. 109, s. 19.
- As to summoning, &c., of special juries for superior Courts in London and Middlesex, see 33 and 34 Vict., c. 77, ss. 16-18.
- As to appeal from Justice of the Peace in summary proceeding by special case to superior Court, see 20 and 21 Vict., c. 43.
- As to affidavit by Justice of the Peace in superior Court of grounds of decision when questioned, see 34 and 35 Vict., c. 26.
- As to ascertainment in one part of United Kingdom of law administered in another part by sending special case to Court, see 22 and 23 Vict., c. 63.
- As to appointment of Tipstaff of Court of Chancery and Common Law, and security by Tipstaff, see 25 and 26 Vict., c. 104.
- As to writs, none touching the common law, to go forth under any of the petty seal, see 28 Edw. I. (*art. sup. cart.*), c. 6.
- As to sergeant or pleader committing deceit in Court, see 3 Edw. I., c. 29.
- As to writs to remove cause from inferior to superior Courts, regulated and restrained, see 43 Eliz., c. 5; 21 Ja. I., c. 23; 12 Geo. I., c. 29; 19 Geo. III., c. 70; 7 and 8 Geo. IV., c. 71; 8 and 9 Vict., c. 127.
- As to removal of Replevin for lord's distress to a higher court by writ of recordari, see 13 Edw. I. (*Stat. West. 2.*), c. 2.
- As to actions of Replevin in superior courts, see 19 and 20 Vict., c. 108, s. 65, &c.; 23 and 24 Vict., c. 126.
- As to abolition of Star Chamber and other courts, see 16 Cha. I., c. 19.

As to abolition of various inferior Courts, see 12 Cha. II., c. 24; 9 and 10 Vict., c. 95; 12 and 13 Vict., c. 101.

As to remission of actions by writ of Proceadences to inferior Courts, see 21 Ja. II., c. 23.

As to inferior and local Courts of Record, districts, judges, fees, suitor money, judgment, witnesses, affidavits, and execution, &c., see 7 and 8 Vict., c. 46; 8 and 9 Vict., c. 127; 35 and 36 Vict., c. 86.

As to seal of Courts and forgery thereof, and of process of, see 7 and 8 Vict., c. 19.

As to powers of Court to award imprisonment in lieu of transportation, see 9 and 10 Vict., c. 24.

As to imprisonment by judge of superior county or inferior court of person having means and refusing to pay Judgment Debt, see 32 and 33 Vict., c. 62.

As to compensation to officers of certain courts, see 8 and 9 Vict., c. 78.

As to providing new buildings for concentration of Superior Courts in London, and transfer of jurisdiction, and application of fees of Courts thereto, see 28 and 29 Vict., c. 48; 28 and 29 Vict., c. 49; 29 and 30 Vict., c. 63; 30 and 31 Vict., c. 122; 34 and 35 Vict., c. 37.

See also notes on "Judges;" "Masters;" "Commissioners to administer oaths;" "The Court of Queen's Bench;" "The Court of Common Pleas;" "The Court of Exchequer;" "Trials by Jury;" "Commission of Assize;" "Lunatics;" "Masters;" *Nisi Prius*;" "Terms;" "Writs."

**NOTE 25.—The permanent number of Judges of the said High Court.—(§ 5, p. 2.)**

Mr. W. Paterson, in his convenient "Practical Statutes for 1873," makes the following remarks:—

"The Lord Chancellor was never intended, as the Act was originally framed, to have been a Judge of this Court, but only of the Court of Appeal. There is, therefore, omission of his name amongst those of the Chief Justices, Master of the Rolls, and Chief Baron, and if any future Lord Chancellor were to be appointed a Judge of the High Court, he would come under this part of the section which would require him to be styled in his appointment, 'Judge of Her Majesty's High Court of Justice,' and to be 'appointed in the same manner in which Puisne Judges and Junior Barons of the Superior Courts of Common Law have been heretofore appointed.' This is absurd; moreover, the addition of the Lord Chancellor makes the number of the Judges exceed twenty-one, which this section says it is not intended it should do. And, as by sec. 54 no Judge of the Court of Appeal is to sit and hear an appeal from any Divisional Court of which he is a member, the Lord Chancellor will be unable to hear any appeal from the Chancery Division."—*PAT STAT.* 1873, p. 124.

**NOTE 26.—Such three other persons.—(§ 6, p. 4.)**

By sec. 8 of this Act the qualification for this appointment is the same as is now required for the Office of Lord Justice in Chancery, viz.: the having been a barrister of 15 years' standing. It is intended that the three who are to be first appointed shall be three of the present Puisne Justices or Barons of the Superior Common Law Courts.

**NOTE 27.—Scotland.—(§ 6, p. 4.)**

Scotland was united to England by 5 Anne, c. 8 (May 1, 1707). The supreme Criminal Court is called the High Court of Justiciary, and is composed of five of the lords of session, added to the Lord Justice General and Lord Justice Clerk, of whom the former, and in his absence, the latter is president. The supreme Civil Court is called the Court of Session, instituted A.D. 1532, and formerly consisting of fifteen judges,—that number being reduced in 1830 by 11 Geo. IV., and 1 Will. IV., c. 69, s. 20, to thirteen, viz., the Lord President, the Lord Justice Clerk, and eleven ordinary lords. This Court is required by 48 Geo. III., c. 151, to sit in two divisions; the Lord President, with three

ordinary lords, forms the first division; and the Lord Justice Clerk and three other ordinary lords form the second division. The Lord President of the Court of Session is by 11 Geo. IV., and 1 Will. IV., c. 69, to be the Lord Justice General. Attached equally to both of the previously mentioned divisions are five permanent Lords Ordinary. The nomination and appointment of the Judges is in the Crown. No one can be appointed who has not served as an advocate or principal clerk of session for five years, or a writer to the signet for ten years.

**NOTE 28.—Ireland.—**(§ 6, p. 4.)

Ireland was a distinct kingdom until January 1, 1801, when by 39 and 40 Geo. III., c. 67, "The United Kingdom of Great Britain and Ireland" was formed. The salary and fees of the Lord Chancellor are settled by 2 and 3 Will. IV., c. 16. The oath of office, so as to exclude reference to religious belief, was altered by 30 and 31 Vict., c. 75, ss. 1-3, and 31 and 32 Vict., c. 72. The appointment, salary, &c., of the office of Lord Justice of Appeal are provided by 19 and 20 Vict., c. 92.

**NOTE 29.—India.—**(§ 6, p. 4.)

The Act for the better Government of India (21 and 22 Vict., c. 106), after reciting that it is expedient that India should be governed by, and in the name of Her Majesty, enacts that the government of the territories in the possession or under the government of the East India Company, and all powers in relation to government vested in or exercised by the said Company in trust for Her Majesty shall cease to be vested in or exercised by the said Company; and all territories in the possession or under the government of the said Company, and all rights vested in, or which have been exercised by the said Company in relation to any territories shall become vested in Her Majesty, and be exercised in Her name.

The principal statutes in connection with India are as follows:—

As to East India Company (I.) The formation, privileges, and government of the East India Company, see 9 Will. III., c. 44; 3 Geo. II., c. 14, s. 14; 7 Geo. III., c. 49; 10 Geo. III., c. 47; 13 Geo. III., c. 63; 21 Geo. III., c. 70; 33 Geo. III., c. 52; 51 Geo. III., c. 75; 53 Geo. III., c. 155; 3 and 4 Will. IV., c. 85; 3 and 4 Will. IV., c. 93; 16 and 17 Vict., c. 95; 21 and 22 Vict., c. 106; 32 and 33 Vict., c. 98, s. 3. (II.) Its designation see 3 and 4 Will. IV., c. 85, s. 111. (III.) Its dissolution, see 36 and 37 Vict., c. 17, s. 36. (IV.) As to raising capital and loans, see 9 Will. III., c. 44; 26 Geo. III., c. 62; 28 Geo. III., c. 29; 29 Geo. III., c. 65; 31 Geo. III., c. 11; 33 Geo. III., c. 47; 34 Geo. III., c. 41; 21 and 22 Vict., c. 3; 21 and 22 Vict., c. 106, s. 42, &c.; 23 and 24 Vict., c. 102. (V.) Its bonds transferable, see 51 Geo. III., c. 64, s. 4. (VI.) Redemption and commutation of capital stock, transfer of stock to Secretary of State, see 36 and 37 Vict., c. 17.

As to raising of loans by Secretary of State in Council in India, see 22 Vict., c. 11; 22 and 23 Vict., c. 39; 23 and 24 Vict., c. 5; 23 and 24 Vict., c. 130; 24 and 25 Vict., c. 25; 24 and 25 Vict., c. 118; 26 and 27 Vict., c. 73; 32 and 33 Vict., c. 106; 34 and 35 Vict., c. 29; 36 and 37 Vict., c. 32.

As to Government and Courts of Justice, judges, juries, &c., in India, see 13 Geo. III., c. 63; 21 Geo. III., c. 70; 24 Geo. III., sess. 2, c. 25; 26 Geo. III., c. 57; 33 Geo. III., c. 52; 37 Geo. III., c. 142; 39 and 40 Geo. III., c. 79; 47 Geo. III., sess. 2, c. 68; 53 Geo. III., c. 155; 4 Geo. IV., c. 71; 6 Geo. IV., c. 85; 9 Geo. IV., c. 74; 2 and 3 Will. IV., c. 51; 2 and 3 Will. IV., c. 117; 6 and 7 Will. IV., c. 53; 2 and 3 Vict., c. 34; 16 and 17 Vict., c. 95; 18 and 19 Vict., c. 93, s. 5; 24 and 25 Vict., c. 104; 28 and 29 Vict., c. 15; 34 and 35 Vict., c. 34.

As to limits of towns of Calcutta, Madras, and Bombay, see 55 Geo. III., c. 84, s. 1.

As to proceedings in Great Britain against British subjects for extortion and misdemeanours in India, see 24 Geo. III., sess. 2, c. 25, s. 64, &c.; 26 Geo. III., c. 57.

As to Board of Commissioners for affairs of India, see 33 Geo. III., c. 52; 53 Geo. III., c. 155.

As to restoration of officers dismissed or superseded by Courts Martial, see 51 Geo. III., c. 75, s. 4.

As to appointment and powers, &c., of Governor General of, and Council of Governor General and Governors, Lieutenant Governors, and Councils of Presidencies, and Lieutenant Governorships, see 3 and 4 Will. IV., c. 85; 14 and 15 Vict., c. 40, s. 21 (marriages); 16 and 17 Vict., c. 95; 17 and 18 Vict., c. 77; 21 and 22 Vict., c. 106; 24 and 25 Vict., c. 67; 28 and 29 Vict., c. 17; 32 and 33 Vict., c. 97, s. 8; 32 and 33 Vict., c. 98; 33 and 34 Vict., c. 3; 34 and 35 Vict., c. 34.

As to transfer of India to Crown and appointment and duties, &c., of Secretary of State for India and Council of India, see 21 and 22 Vict., c. 106; 22 and 23 Vict., c. 41; 32 and 33 Vict., c. 97.

As to Civil Service in India (I.) generally, see 33 Geo. III., c. 52, s. 57, &c.; 47 Geo. III., sess. 2, c. 68; 53 Geo. III., c. 155; 7 Geo. IV., c. 56; 2 and 3 Will. IV., c. 117; 21 and 22 Vict., c. 106; 24 and 25 Vict., c. 54. (II.) Age for writers, see 7 Will. IV., and 1 Vict., c. 70, s. 5. (III.) Superannuation to members, see 21 and 22 Vict., c. 106, s. 18; 23 and 24 Vict., c. 89. (IV.) Appointment of natives to offices, see 33 and 34 Vict., c. 3, s. 6.

As to establishment of public banks in India, see 47 Geo. III., sess. 2, c. 68, ss. 8-10.

As to army and forts and naval force, courts martial, &c., see 50 Geo. III., c. 87, s. 7; 53 Geo. III., c. 155; 7 Geo. IV., c. 52; 7 Will. IV., and 1 Vict., c. 47; 3 and 4 Vict., c. 37; 7 and 8 Vict., c. 18; 21 and 22 Vict., c. 106; 22 and 23 Vict., c. 27; 23 and 24 Vict., c. 100; 24 and 25 Vict., c. 89; 29 and 30 Vict., c. 47.

As to bishops, archdeacons, and clergy in India (I.) generally, see 53 Geo. III., c. 155, ss. 49-52; 4 Geo. IV., c. 71, ss. 2-6; 6 Geo. IV., c. 85, ss. 5-15, &c.; 3 and 4 Will. IV., c. 85, ss. 89-102. (II.) Allowances when on furlough, see 5 and 6 Vict., c. 119; 34 and 35 Vict., c. 62. (III.) Power to act in England, see 15 and 16 Vict., c. 52.

As to taking evidence as to adultery committed in India for English Divorce Court, see 1 Geo. IV., c. 101.

As to liability of realty of deceased as assets, see 9 Geo. IV., c. 33.

As to Vice Admiralty Court in India, and validity of Acts of Surrogate, see 56 Geo. III., c. 82; 2 and 3 Will. IV., c. 51.

As to powers of Governors in Council to appoint qualified residents as justices of the peace in India, see 2 and 3 Will. IV., c. 117.

As to creation of new and alteration of limits of existing presidencies, provinces, and lieutenant governorships, &c., see 5 and 6 Will. IV., c. 52; 16 and 17 Vict., c. 95, ss. 15-19; 24 and 25 Vict., c. 67, ss. 46-49; 28 and 29 Vict., c. 17.

As to creation of lieutenant governorship of North West provinces, see 5 and 6 Will. IV., c. 52.

As to registry and regulation of ships built, and trading in India, see 3 and 4 Vict., c. 56.

As to insolvent debtors in India, see 11 and 12 Vict., c. 21.

As to marriages in India, where one or both parties, Christians, and in other cases, see 14 and 15 Vict., c. 40.

As to removal of lunatics from India to United Kingdom, see 14 and 15 Vict., c. 41.

As to abolition of Haileybury College, see 18 and 19 Vict., c. 53.

As to payment of debts and disposal of effects of officers and soldiers dying in India, see 26 and 27 Vict., c. 57.

As to transfer to Secretary of State for India of Bengal, Madras, and Bombay military funds, and other pension funds, see 29 and 30 Vict., c. 18.

As to contracts and sale of land by government (I.) generally, see 21 and 32 Vict., c. 136, s. 40; 22 and 23 Vict., c. 41. (II.) Valid in case of Inam lands, see 32 and 33 Vict., c. 29. (III.) In certain other cases, notwithstanding formal defects, see 33 and 34 Vict., c. 59.

As to issue of debenture stock by railway companies in India, see 31 and 33 Vict., c. 26.

As to registration and transfer of shares, stock, &c., of railway companies in India, see 36 and 37 Vict., c. 43.

As to transfer of Orissa and Behar undertakings by East India Irrigation and Canal Company to Secretary of State, see 32 and 33 Vict., c. 7.

As to power of Governor General in Council to make laws for native Indian subjects beyond Indian territories, see 32 and 33 Vict., c. 98.



As to jurisdiction over and trial of British subjects in India, see 34 and 35 Vict., c. 34.

As to army (I.) court martials, offences of, and actions against soldiers in India, see 7 and 8 Vict., c. 18. (II.) What portion of Indian army may be in United Kingdom, see 22 and 23 Vict., c. 27. (III.) Transfer to British army of soldiers of Indian army, see 24 and 25 Vict., c. 74. (IV.) Enlistment in India in British army or in Indian army, see 24 and 25 Vict., c. 74.

As to regulations for proper treatment of Lascars in ship trading with India, 4 Geo. IV., c. 80, ss. 25-34.

**NOTE 30.—Barrister of Ten Years' Standing.—**(§ 8, p. 5.)

*Lat.*, "barrasterius," from *barra*, a bar; in French, from *barreau*, a bar of wood or iron: figuratively, the place in a Court of Justice appropriated to the advocates. The term "barrister," in England, it is said, arose from the arrangement of the halls of the different Inns of Courts. The benchers and readers, being the superiors of each house, occupied, on public occasions of assembly, the upper end of the hall, which was raised on a dais, and separated from the rest of the building by a bar. The next in degree were the utter barristers, who, after they had attained a certain standing, were called from the body of the hall to the bar, i.e. the first place outside the bar, for the purpose of taking a principal part in the mootings, or exercises of the house, and hence they probably derived the name of "utter," or outer barristers. The other members of the inn, consisting of students of the law under the degree of utter barristers, took their places nearer to the centre of the hall and farther from the bar, and from this manner of distribution appear to have been called "inner" barrister. The distinction between utter and inner barrister is at present abolished: the former are called barrister, generally, and the latter are called students. The degree of utter barrister, though it gave rank and precedence in the Inns of Court, and placed the individual in a class from which advocates were always taken, did not originally give any authority to plead in the Courts of Justice. In the old reports of the proceedings of Courts the term is unknown; serjeants and apprentices-at-law, who are supposed by Dugdale to be the same persons, being the only pleaders or advocates mentioned in the earlier year-books. In the time of Stowe, however, who wrote in the latter part of Elizabeth's reign, it is clear that utter barristers were entitled to act as advocates, as he expressly says that persons called to that degree are "so enabled to be common councillors and to practice the law, both at their chambers and at the barrae."—[Petersdorff's Abrid. tit., "Barrister."]

**NOTE 31.—Qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery.—**(§ 8, p. 5.)

The 14 and 15 Vict., c. 83, creates the office of Lord Justice of the Court of Appeal in Chancery. The qualification is by section 1 of that Act, the "being or having been a barrister of 15 years' standing."

**NOTE 32.—Lords Justices of the Court of Appeal in Chancery.—**(§ 8, p. 5.)

The principal statutes in connection with these Judges are as follows:—

As to appointment, jurisdiction, officers, &c., see 14 and 15 Vict., c. 83; 32 and 33 Vict., c. 91.

As to their salaries charged on Consolidated Fund, see 15 and 16 Vict., c. 87; 32 and 33 Vict., c. 91.

As to their jurisdiction sitting separately, see 30 and 31 Vict., c. 64; 30 and 31 Vict., c. 87, s. 13; 31 and 32 Vict., c. 11.

See also notes, "High Court of Chancery of England," "Judges," "Lunatic."

**NOTE 33.—The Degree of Serjeant-at-Law.—**(§ 8, p. 5.)

This provision abolishes a very ancient custom, although the practice of appointing Judges from amongst the serjeants had of late years been eluded by making the intended Judge a serjeant *pro re nata*, or an occasional serjeant.—(Manning, 74, n.)

"Serjeant" is derived from the Latin *serviens* through the French *sergent*, and

the Italian *serpente*, and means "servant," and is applied as a title to some of the servants of the King as Serjeant-Surgeon, or Surgeon-Servant to the King.

The degree of Serjeant-at-Law is of very remote antiquity. Lord Coke, in his 10th report, expressing the opinion of the profession at that time, attributes the existence of serjeants to a period anterior to the Conquest. He bases the opinion on passages from the *Mirror of Justice*, a work of authority supposed to have been written before the Saxon sway was destroyed. The author thus writes:—"There are many who know not how to defend their causes in judgment, and there are many who do, and therefore pleaders are necessary: so that that which the plaintiffs in an action cannot know how to do by themselves they may do by their serjeants, attorneys, or friends. Countours are serjeants, skilful in the laws of the realm who serve the common people to declare and defend actions in judgment for those who have need of them for their fees. Every serjeant is chargeable by the oath that he shall do no wrong or falsify contrary to his knowledge, but shall plead for his client the best he can according to his understanding."

The degree, however, may undoubtedly be traced to the Norman Conquest, and is recognised in a Parliamentary document of 3rd Edward I. The name is derived from the special services exacted under the system of feudal tenures. William the Conqueror created serjeanties of various kinds, and some were connected with the administration of justice. Many of the great vassals of the Crown imitated their Sovereign in the creation of similar appointments. Lord Coke, in his preface to the 10th report, says, "There are two sorts of business to be done in prosecutions; one by the countor or serjeant, another sort to be done by the friend or *procurator*; the latter now called attorney. The only persons spoken of as pleaders are the serjeants or countours." Serjeants enjoyed, until the Court was thrown open in 1846, the exclusive privilege of pleading in the Court of Common Pleas.

Fortescue (c. 5), p. 175 writes thus:—

"There is an honorary estate no less celebrated and solemn than that of a 'Doctor of Law,' which is called the degree of a 'Serjeant-at-Law.' It is conferred in the following manner:—

"The Chief Justice of the Common Pleas by and with the advice and consent of the Judges, is wont to pitch upon as often as he sees fitting, seven or eight persons, such as have made the greatest proficiency in the general study of the laws, and whom they judge best qualified. The manner is to deliver in their names, in writing, to the Lord Chancellor, who, by virtue of the King's writ, shall forthwith command every one of the persons so pitched upon, that he be before the King at a day certain, to take upon him the state and degree of Serjeant-at-Law, under a heavy penalty."

The author then describes the oath to be taken; the giving of gold and a banquet. He further states, "No one, be he never so well read and practised in the law, can be made Judge of the King's Bench or Common Pleas, unless he be first called to be a Serjeant-at-Law, wherefore to this day no one hath been admitted to the state and degree of a Serjeant-at-Law, till he hath been first a student and a barrister for full sixteen years."

Bacon says, "None shall be made sergeants but such as probably might be held fit to be Judges afterwards."

#### NOTE 34.—The Oaths to be taken by the Lord Chancellor.—

(§ 9, p. 6.)

The oath taken by the Lord Chancellor consists of six parts: "1. That well and truly he shall serve our Sovereign Lady the Queen and her people in the office of Chancellor. 2. That he shall do right to all manner of people, poor and rich, after the laws and usages of the realm. 3. That he shall truly counsel the Queen, and his counsel he shall layne [Norman, "to conceal"] and keep. 4. That he shall not know nor suffer the hurt or disheriting of the Queen, or that the rights of the Crown be decreased by any means as far as he may let it. 5. If he may not let it, he shall make it clearly and expressly to be known to the Queen with his true advice and counsel. 6. And that he shall do and purchase the King's profit in all that he reasonably may, as God him help."—4 Inst., 88.

## NOTE 35.—Peers.—(§ 10, p. 6.)

The principal statutes in connection with this subject are as follows:—

- As to precedence of Peers and of Officers of State, see 31 Hen. VIII., c. 10.
- As to trial of Peers by Peers, see 13 Cha. II., stat. 1, c. 1.
- As to trial and punishment of Peers for felony as other subjects, see 4 and 5 Vict., c. 22.
- As to trial of noble ladies as Peers, see 20 Hen. VI., c. 9; 7 and 8 Will. III., c. 3.
- As to Peer disqualified to sit and vote in House of Lords during bankruptcy, and doing so to be breach of privilege, see 34 and 35 Vict., c. 50.
- As to writ of summons not to be issued to disqualified Peer, see 34 and 35 Vict., c. 50, s. 8.

## NOTE 36.—Commission of Assize.—(§ 11, p. 6.)

There are two commissions, viz. (I.) GENERAL, which is issued twice a year to the Judges of the Superior Courts of Common Law at Westminster, two of whom are assigned to every circuit; (II.) SPECIAL, which are granted to certain Judges to try certain causes and crimes.

The Judges have four several commissions—(1.) Of *Oyer and Terminer*, directed to them and many other gentlemen of the county, by which they are empowered to try treasons, felonies, &c. This is the largest commission. (2.) Of *gaol delivery*, directed to the Judges and the Clerk of Assize associate, empowering them to try every prisoner in the gaol committed for any offence whatsoever, so as to clear the prisons. (3.) Of *Nisi Prius* directed to the Judges, the Clerks of Assize, and others, by which civil causes, in which issue has been joined in any one of the Superior Courts, are tried on circuit by a jury of twelve men of the county, in which the venue is laid, and on return of the verdict to the Court above, usually on the first day of the term following, the Court gives judgment on the fifth day, after allowing the four intermediate days to either party, if dissatisfied with the verdict, to move for a new trial. These causes, by the practice of the Courts, are usually appointed to be tried at Westminster in some Easter or Michaelmas term, by a jury returned from the county in which is laid the venue, but with this proviso, "*Nisi Prius*" (unless before), the day appointed the Judges of Assize come into the county in question. This they are sure to do in the preceding vacation, and the trial is there had instead of at Westminster. (4.) A commission of the peace, by which all justices are bound to be present at their county Assizes, besides the Sheriffs, to give attendance to the Judges, or else suffer a fine. There used to be another commission, that of *assise*, directed to the Judges and Clerk of Assize, to take assises and do right upon writs of assize brought before them, by such as were wrongfully thrust out of their possessions. These writs are abolished, and recourse is had to an action of ejectment, tried at *Nisi Prius*. *Bracton*, lib. 3; 3 *Bl. Com.* 60, 269; Wharton Dic. tit. "Assize."

The principal statutes in connection with this subject are as follows:—

- As to taking of, and adjournment of Assizes, regulated, see 13 Edw. I. (*Stat. West 2*), c. 30; 25 Edw. I. (*Mag. Car.*), c. 12.
- As to calendar of prisoners at Assizes and Quarter Sessions, see 3 Hen. VII., c. 3; 28 and 29 Vict., c. 126.
- As to prisoner not to be removed by habeas corpus to avoid trial, after proclamation of Assizes, see 31 Cha. II., c. 2, s. 17.
- As to no fee to be taken from prisoner by gaoler on entrance, commitment, or discharge, or by Clerk of Assize, Clerk of Peace, &c., on discharge when no bill found or acquitted, see 55 Geo. III., c. 50; 8 and 9 Vict., c. 114.
- As to Counties Palatine to be on circuit, see 1 Geo. IV., c. 55.
- As to postponement of opening of commissions for Assizes, see 3 Geo. IV., c. 10.
- As to Assizes in Cheshire and Wales, see 11 Geo. IV., and 1 Will. IV., c. 70.
- As to Assizes in Norfolk and Norwich, see 2 and 3 Will. IV., c. 47.
- As to order in Council for fixing place of holding Assizes, and consequent arrangements as to venue jurors, prisons, writs, &c., see 3 and 4 Will. IV., c. 71.
- As to holding of Assizes either in county or adjoining county of city, &c., see 3 and 3 Vict., c. 73.

- As to Assizes in Buckinghamshire, see 12 and 13 Vict., c. 6.  
 As to Assizes for Warwickshire, see 17 and 18 Vict., c. 35.  
 As to police to keep order in Courts of Assize, see 22 and 23 Vict., c. 32.  
 As to alteration of circuits, see 26 and 27 Vict., c. 122.  
 As to providing, repairing, and building of Shire Hall, or of County Hall, &c., and borrowing on county rate for Shire Hall, see 7 Geo. IV., c. 63; 7 Will. IV., and 1 Vict., c. 24; 10 and 11 Vict., c. 28; 35 and 36 Vict., c. 7.  
 As to Clerk of Assize not to be of counsel on circuit, see 33 Hen. VIII., c. 24.  
 As to salary of Clerk of Assize in lieu of fees both as Clerk of Assize, associate on circuit, and Clerk of the Crown, see 15 and 16 Vict., c. 73; 18 and 19 Vict., c. 126; 26 and 27 Vict., c. 122.  
 As to qualifications for office of Clerk of Assize, and regulation as to fees of, see 32 and 33 Vict., c. 89.  
 As to Justices of Assize to be assigned out of the Kings sworn justices, see 13 Edw. I. (*Stat. West. 2*), c. 30.  
 As to commission and powers of Justices of Assize, and of justices of gaol delivery, oyer, and terminer, &c., see 13 Edw. I. (*Stat. West. 2*), cc. 29-30; 21 Edw. I. (*Stat. de justic. assign.*); 27 Edw. I. (*Stat. de fin.*), c. 3; 12 Edw. II., cc. 3-4; 2 Edw. III., c. 2; 4 Edw. III., c. 2; 4 Edw. III., c. 11; 14 Edw. III., stat. 1, c. 16; 20 Edw. III., c. 6; 14 Hen. VI., c. 1; 18 Eliz., c. 12.  
 As to delivery of gaols by Justices of Assize, see 27 Edw. I., stat. 1, c. 3; 3 Hen. VII., c. 3.  
 As to power of Justices of Assize to take inquisitions of all pleas in courts of Queen's Bench, Common Pleas, or Exchequer, see 13 Edw. I. (*Stat. West. 2*), c. 30; 2 and 3 Vict., c. 22.  
 As to assignment of Justices of Assize in Wales, see 27 Hen. VIII., c. 5; 34 and 35 Hen. VIII., c. 26.  
 As to commissions of Justices of Assize in borough corporate, see 2 and 3 Ph. and Mar. c. 18.  
 As to appointment of Justices of Assize, see 2 Edw. III., c. 2; 20 Edw. III., c. 1.  
 As to power of Justices of Assize to act in their own counties, see 12 Geo. II., c. 27; 49 Geo. III., c. 91.  
 As to Justices of Assize not to be disqualified by new dignity, see 1 Edw. VI., c. 7.  
 As to inquiry by Justices of Assize into sheriff's observance of certain duties, see 23 Hen. VI., c. 9; 27 Edw. I., stat. 1, c. 3; 32 Geo. II., c. 28.  
 As to power of Justices of Assize to take bail, see 4 Will. and Mar. c. 4.  
 As to lodgings of Justices of Assize when deemed to be in both county of city, &c., and county at large, see 7 Geo. IV., c. 63, s. 8.  
 As to providing lodgings for Justices of Assize, see 7 Geo. IV., c. 63; 2 and 3 Vict., c. 69; 35 and 36 Vict., c. 7.  
 As to commission for Queen's counsel, and for barristers having patent of precedence to act as Justices of Assize, see 13 and 14 Vict., c. 25.  
 As to trial of revenue cases by Justices of Assize, see 22 and 23 Vict., c. 21.  
 As to bill of exception to be signed by Justices of Assize, see 13 Edw. I. (*Stat. West. 2*), c. 31.  
 See also notes, "Superior Courts of Common Law;" "Judges;" "Nisi Prius."

#### NOTE 37.—Assize.—(§ 11, p. 6.)

The word "assise" or "assize" is derived from the Latin *Assideo*, to sit together, and means a jury who sit together for the purpose of trying a cause, or rather a court or jurisdiction, which summons a jury by a commission of assize to take the assizes. Hence the judicial assemblies held by the Queen's commission in every county, as well to take indictments as to try causes at Nisi Prius, are commonly termed the assizes. These are composed of two or more commissioners, called judges of assize or of assize, and *Nisi Prius* (who are twice in every year sent by special commission from the Crown) on *circuits* (all round the kingdom to try by a jury of the respective counties the truth of such matters of facts as are then under dispute in the Courts of Westminster Hall), there being, however, as to London and Middlesex, this exception, that instead of their being comprised in any circuit courts of

*Nisi Prius* are held there for the same purpose in and after every term before the chief or other judge of the superior courts at what are called the London and Westminster sittings.

These judges of assize came into use in the room of the ancient justices in eyre, *justiciarii itinere*: who were regularly established, if not first appointed, by the Parliament of Northampton, A.D. 1178, in the twenty-second year of Henry the Second (Seld. Jan. 1-2, s. 5; Spelm. Cod. 329), with a delegated power from the King's great court or *aula regia* being looked upon as members thereof, and they afterwards made their circuit round the kingdom once in seven years for the purpose of trying causes (Co. Litt. 293. "Anno 1261, *justiciarii itinerantes venerunt apud Wigorniam in octavis S. Johannis baptiste* ;—*et totus comitatus eos admittere recusavit quod septem anni nondum erant elapsi postquam justiciarii ibidem ultimo sederunt*."—Annal Eccl. Wigorn in Whart. Angl. Sacr. I., 495.) They were afterwards directed by *Magna Charta*, c. 12, to be sent into every county once a year to take (or receive the verdict of the jurors or recognitors in certain actions then called) recognitions or assizes the most difficult of which they are directed to adjourn into the Court of Common Pleas to be there determined. The itinerant justices were sometimes mere justices of assize or of dower, or of gaol delivery, and the like; and they had sometimes a more general commission to determine all manner of causes being constituted *justiciarii ad omnia placita* (Bract. 1-3, tr. 1, c. 11), but the recent justices of assize and *Nisi Prius* were more immediately derived from the statute of Westminster the second (13 Edw. I., c. 30), and consisted principally of the judges of the superior courts of common law to whom the duty was confided of thus superintending the trial of matters of fact at the courts of assizes and *Nisi Prius*—as well as that of deciding matters of law and transacting other judicial business at their sittings *in banc* (as they are called), that is on the bench of their respective courts at Westminster. For by the above mentioned statute of 13 Edw. I., c. 30, the judges of assize and *Nisi Prius* are to be assigned out of the king's sworn justices, associating to themselves one or two discreet knights of each county:—by statute 27 Ed. I., c. 4 (explained by 12 Edw. II., c. 3), assizes and inquests are allowed to be taken before any one justice of the court in which the plea was brought associating to him one knight or other approved man of the county:—by statute 14 Ed. III., c. 16, inquests of *Nisi Prius* may be taken before any justice of either bench (though the plea be not depending in his own court), or before the Chief Baron of the Exchequer, if he be a man of law or otherwise, before the justices of assize, so that one of such justices be a Judge of the King's Bench or Common Pleas, or the king's serjeant sworn:—and lastly, by 2 and 3 Vict., c. 22, all justices of assize may on their respective circuits try causes pending in the Court of Exchequer, without issuing (as it had till then been considered necessary to do) a separate commission from the Exchequer for that purpose. They usually make their circuits in the respective vacations after Hilary and Trinity Terms. In the vacation after Michaelmas Term a special commission sometimes issues to secure the more speedy trial of persons charged in different parts of the kingdom with offences not triable at the sessions. This is called the *winter circuit*: assizes being allowed to be taken in the holy time of Lent by consent of the bishops, at the king's request, as expressed in statute Westminster the first, 3 Edw. I., c. 51. And it was also usual during the times of Popery for the prelates to grant annual licences to the justices of assize to administer oaths in holy times; for oaths being of a sacred nature, the logic of those deluded ages concluded that they must be of ecclesiastical cognizance (Instances hereof may be met with in the Appendix to Spelman's Original of the terms, and in Parker's Antiquities, 209). The prudent jealousy of our ancestors ordained (Stat. 4, Edw. III., c. 2; 8 Rich. II., c. 2; 33 Hen. VIII., c. 24), that no man of law should be judge of assize in his own county wherein he was born, or doth inhabit, and a similar prohibition is found in the civil law (Fl. 1, 22, 23), which has carried this principle so far that it is equivalent to the crime of sacrilege for a man to be governor of the province in which he was born, or has any civil connexion (C. 9, 29, 4). But in modern times this prohibition always inconvenient has been also deemed unnecessary, the apprehensions on which it is founded being sufficiently obviated by the high character and position of our judges. By statute, 12 Geo. II., c. 27, and 49 Geo. III., c. 91, it is consequently abolished.—3 Step. Black, 480.

**NOTE 38.—Nisi Prius.—(§ 11, p. 6.)**

The words *Nisi Prius* form a common law phrase which originated thus:—An action was formerly triable only in the Court where it was brought. But it was provided by Magna Charta, in case of the subject, that assizes of novel disseisin and mortancestor (which were the most common remedies of that day) should thenceforward, instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to be sent into every county once a year to take these assizes there (1 Reeves, 246). These local trials being convenient, were applied to other actions; for, by the statute of *Nisi Prius*, 13 Edw. I., st. 1, c. 30, as the general course of proceeding, that writs of *venire* for summoning juries to the superior courts are in the following term:—*Præcipimus tibi quod venire facias coram justiciariis nostris apud Westm. in Octavis Sancti Michaelis NISI talis et talis, tali die et loco, ad partes illas venerint, duodecim*, &c. Thus the trial was to be had at Westminster only in the event of its not previously taking place in the county before the justices appointed to take the assizes. This clause of *Nisi* or *Nisi Prius* is not now retained in the *venire*, but it occurs in the record and the judgment roll. And it is enforced by subsequent statute of 14 Edw. III., c. 16, which authorises a trial before the justices of assize, in lieu of the superior court, and gives it the name of a trial at *Nisi Prius* (2 Inst., 424). As to sittings at *Nisi Prius*, see 1 Chit. Arch. Prac. by Pren., 171 and 379, et seq. Wharton Dic. tit. "*Nisi Prius*."

The principal statutes in connection with this subject are as follows:—

As to what cases to be tried at *Nisi Prius*, and where, before what persons, and return of inquest, see 13 Edw. I. (Stat. West. 2), c. 30; 27 Edw. I. (Stat. de fin), c. 4; 12 Edw. II. (Stat. Ebor.), c. 3; 2 Edw. III., c. 16.

As to *Nisi Prius* may be granted before a justice of another Court than where the suit depends, see 14 Edw. III., stat. 1, c. 16.

As to nothing to be tried at *Nisi Prius* until name of jurors returned, see 42 Edw. III., c. 11.

As to trial at *Nisi Prius* in county of Middlesex, see 18 Eliz., c. 12; 12 Geo. I., c. 31; 1 Geo. IV., c. 21.

As to trial at *Nisi Prius* in county of Middlesex in vacation, see 17 and 18 Vict., c. 125, s. 95.

As to trial at *Nisi Prius* in Middlesex and London before any of Justices of Queen's Bench, see 1 Geo. IV., c. 55.

As to record of *Nisi Prius*, see 15 and 16 Vict., c. 78.

As to trial at *Nisi Prius* in Westminster and London by two Judges of the same Court at once, see 17 and 18 Vict., c. 125.

As to trial at *Nisi Prius* in Westminster and London by any number of Judges at once, see 33 and 34 Vict., c. 6, s. 6.

As to proceedings on, and adjournment of trial at *Nisi Prius*, see 17 and 18 Vict., c. 125.

As to summoning and panel of jury, and view by common or special for *Nisi Prius*, see 15 and 16 Vict., c. 76, s. 104, &c.; 17 and 18 Vict., c. 125, s. 53, &c.

See also notes, "Superior Courts of Common Law;" "Judges;" "Commission of Assize."

**NOTE 39.—Oyer and Terminer.—(§ 11, p. 6.)**

The commission of oyer and terminer is directed to the judges and other gentlemen of the county to which it is issued, by virtue whereof they have power to "hear and determine" treasons and all manner of felonies and trespasses. *Terminer* is sometimes written *determiner*. When any sudden insurrection takes place or any public outrage is committed, which requires speedy reformation, or there is a press of business, then a special commission is immediately granted.

See also notes, "Commission of Assize;" "Assize;" *Nisi Prius*;" "Judges."

**NOTE 40.—Gaol Delivery.—(§ 11, p. 6.)**

The commission of *Gaol Delivery* is directed to the judges to try and deliver every prisoner in gaol when they arrive at the assize town.

See also "Commission of Assize;" "Assize;" "*Nisi Prius*;" "Judges."

## NOTE 41.—Salary of the Lord Chancellor — (§ 13, p. 7.)

"On account of his high rank, his important duties, his great labours, and the precariousness of his tenure, the Chancellor has generally received the largest remuneration of any servant of the Crown. In early times this arose mainly from presents, and I am afraid bribes. The deficiency was afterwards often supplied by grants of land from the Crown, which continued down to the time of Lord Somers. Then came the system of providing for the Chancellor and his family by sinecure places in possession and in reversion. Now, all these places are abolished, together with all fees, and Parliament has provided a liberal but not excessive fixed salary for the holder of the Great Seal, with a retired allowance when he has resigned it, to enable him to maintain his station, and still to exert himself in the public service."—Camp. Chan. 1., 27.

These sinecure offices which were abolished by 2 and 3 Will. IV., c. 3, sec. 1, are there enumerated, as follows:— "Keeper or Clerk of His Majesty's Hanaper, the Patentee of the Subpena Office, the Registrar of Affidavits, the Clerk of the Crown in Chancery, the Clerk of the Patents, the Clerk of the Custody of Lunatics and Idiots, the Prothonotary of the Court of Chancery, the Chaff Wax, the Sealer, the Clerk of the Presentations, the Clerk of Inrolments in Bankruptcy, the Clerk of Dispensations and Faculties, and the Patentee for the Execution of the Law and Statutes concerning bankrupts."

The third section of this act provides the pension of the Lord Chancellor in the following words:—"And whereas, by reason of the abolition of the said offices, the Lord High Chancellor or Lord Keeper of the Great Seal for the time being, will be deprived of the Patronage and Gift of the said offices, which does of right belong to and has been exercised by him; and it is therefore just and equitable that more ample provision should be made for the Lord High Chancellor or Lord Keeper of the Great Seal on his retirement from office, be it therefore enacted: That it shall be lawful for His Majesty, his heirs and successors, by any Letters Patent under the Great Seal of Great Britain, to give and grant unto any person executing the office of Lord High Chancellor of Great Britain for the time being, or the office of Keeper of the Great Seal of Great Britain, an annuity or yearly sum of money not exceeding £5,000 of lawful money of Great Britain, to commence and take effect immediately from and after the period, whenever the person to whom such annuity or yearly sum of money shall be granted, shall resign the said office of Lord Chancellor, of the office of Keeper of the Great Seal of Great Britain, or be removed from the same respectively, and to continue from thenceforth for, and during the natural life of the person to whom the same shall be granted as aforesaid, and such annuity or yearly rent, or sum shall be issued and payable out of, and be charged and chargeable upon the Consolidated Fund of the United Kingdom of Great Britain and Ireland, after paying or reserving sufficient to pay all such sum or sums of money as have been directed under any former Act or Acts to be paid out of the same, and the said annuity or yearly rent, or sum, shall from time to time be paid and payable quarterly, free and clear of all taxes and deductions whatsoever, at the four usual days of payment in the year, that is to say, the 5th day of January, the 5th day of April, the 5th day of July and the 10th day of October in each year by even and equal portions, the first payment to be made on such of the said days as shall next happen after such resignation as aforesaid, of the said office: Provided always that it shall be lawful for His Majesty, his heirs and successors, in and by the said Letters Patent, if he or they shall think fit to limit the duration and payment of any such annuity to be granted to any person executing the office of the said Lord High Chancellor, or the office of Keeper of the Great Seal of Great Britain, or any part of such annuity, to such periods of time during the natural life of such person in which he shall not execute the said office of Lord High Chancellor, or the Keeper of the Great Seal of Great Britain, or any other office of profit under His Majesty, his heirs or successors, so as such annuity to be granted as aforesaid, together with the salary and profits of such other office, shall together not exceed in the whole the sum of £5,000. Anything contained in any Act or Acts to the contrary hereof in any wise notwithstanding."

By 14 and 15 Vict., c. 83, s. 17, it is provided that:—"From and after the 11th of October, 1851, the salary of the Lord Chancellor shall be the net yearly sum of £10,000; and there shall be deducted from the yearly sum payable to the Lord Chancellor under the Act 2 and 3 Will. IV., c. 122, the amount of any salary or sum, which for the time being, may be payable to the Lord Chancellor as Speaker of the House of Lords, so that such yearly sum only shall be paid by the Governor and Company of the Bank of England to the Lord Chancellor, under and according to the provisions of the said Act, as with the salary or sum certified to be payable to the Lord Chancellor as such Speaker, shall be sufficient to make up the net yearly sum of £10,000; and the Clerk Assistant of the Parliaments, shall on or before the 11th October, 1851, and from time to time, so often as the salary or sum payable to the Lord Chancellor as such Speaker is altered, certify in writing under the hand of such Clerk Assistant to the said Governor and Company, the amount of the salary or the sum for the time being, payable to the Lord Chancellor as such Speaker."

**NOTE 42.—Salary of the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.—(§ 13, p. 8.)**

The salary payable to the Chief Justice of the Queen's Bench by 2 and 3 Will. IV., c. 116, s. 1, was £10,000, to the Chief Justice of the Common Pleas £8,000, and to the Chief Baron of the Exchequer £7,000. But 14 and 15 Vict., c. 41, recites that from the death of Lord Tenterden the salary of £8,000 had been granted to and accepted by the Chief Justice for the time being of the said Court of Queen's Bench instead of the said salary of £10,000, and that the salary of £7,000 had been granted to and accepted by the then present Chief Justice of the said Court of Common Pleas instead of the salary of £8,000. And in the first and only section of the Act the salaries of the two Chief Justices are accordingly fixed at the smaller sums mentioned. The salary of the Chief Baron has not been altered since 2 and 3 Will. IV.

**NOTE 43.—Salary of the Master of the Rolls.—(§ 13, p. 8.)**

By 7 Will. IV., and 1 Vict., cap. 46, the annual sum of £7,000 was directed to be paid to the Master of the Rolls in lieu of all fees, but by 14 and 15 Vict., c. 83, s. 18, "From and after the 11th day of October, 1851, in lieu of the salary payable to the Master of the Rolls under the Act 7th Will. IV., and 1 Vict., c. 46, there shall be paid for the salary of the Master of the Rolls for the time being out of the fund on the days and according to the provisions mentioned and contained in the said Act, the annual sum of £8,000 free and clear from all taxes and deductions."

**NOTE 44.—Salary of each of the other Judges.—(§ 13, p. 8.)**

The salary fixed by this Act is the same payable by 2 and 3 Will. IV., c. 116, viz., to each of the Puisne Justices of the Court of Queen's Bench and Common Pleas and Barons of the Exchequer, £5,000 per annum.

**NOTE 45.—The Pension of the Lord Chief Justice of England.—(§ 14, p. 8.)**

By 39 Geo. III., c. 110, s. 7, there may be granted by letters patent to any person who may or shall have executed the office of Chief Justice of the Queen's Bench, and shall have resigned the same an annuity or yearly sum of £3,000, such annuity "to commence from and after the period when the person to whom any such annuity or yearly sum of money shall be granted as aforesaid shall have resigned his said office, and to continue from thenceforth for, and during the natural life of the person to whom the same shall be granted as aforesaid; and every such annuity or yearly sum of money shall be issued and payable out of and charged, and chargeable upon the consolidated fund next in order of payment to and after paying or reserving sufficient to pay the said several annuities hereinbefore granted, and all such sum or sums of money as have been directed by any former Act or Acts of Parliament, to be paid out of



the same, but with like preference to all other payments as aforesaid; and the same shall from time to time be paid, and payable quarterly, free and clear of all taxes, and deductions whatever on the four usual days of payment in the year before mentioned, in each and every year, by even and equal portions, the first payment thereof to be made on such of the said days as shall next happen after such resignation as aforesaid of the person to whom any such annuity or yearly sum of money shall be granted:—Provided always that no such annuity or yearly sum of money granted to any person having executed the office of Chief Justice, Master of the Rolls, Chief Baron, Justice or Baron of the Coif of the said Courts respectively, shall be valid, unless such chief Justice, Master of the Rolls, Chief Baron, Justice or Baron respectively, shall have continued in one or more of the said last mentioned offices for the period of fifteen years, or shall be afflicted with some permanent infirmity, disabling him from the due execution of his office, which shall be distinctly recited in the said grant." By 53 Geo. III., c. 153, s. 1, an additional annuity may be granted not exceeding the sum of £800. And by section 2 of the same Act, "the said several annuities and yearly sums of money shall from time to time from the granting thereof be payable, and paid quarterly free and clear from all taxes and deductions whatsoever." By 6 Geo. IV., c. 82, s. 10, an additional annuity not exceeding £200 was granted, making the total £4,000.

**NOTE 46.—The Pension of the Master of the Rolls.—**(§ 14 p. 8)

By 39 Geo. III., c. 110, s. 7, the pension is fixed at £2,500 on the terms fully set out in the previous note, on "The pension of the Lord Chief Justice of England." By 53 Geo. III., c. 153, s. 1, an additional pension not exceeding £800 is granted, and by 6 Geo. IV., c. 84, s. 4, a further pension of £450, making a total of £3,750.

**NOTE 47.—The Pension of the Lord Chief Justice of the Common Pleas.—**(§ 14, p. 8)

By 39 Geo. III., c. 110, s. 7, the pension is fixed at £2,500 on the terms fully set out in the previous note, on "The pension of the Lord Chief Justice of England." By 53 Geo. III., c. 153, s. 1, an additional pension not exceeding £800 is granted, and by 6 Geo. IV., c. 83, a further pension of £450, making a total of £3,750.

**NOTE 48.—The Pension of the Lord Chief Baron of the Exchequer.—**(§ 14, p. 8.)

By 39 Geo. III., c. 110, s. 7, the pension is fixed at £2,500 on the terms fully set out in the previous note, on "The pension of the Lord Chief Justice of England." By 53 Geo. III., c. 153, s. 1, an additional pension, not exceeding £800, is granted, and by 6 Geo. IV., c. 84, s. 4, a further pension of £450, making a total of £3,750.

**NOTE 49.—The Pensions of Ordinary Judges of the Court of Appeal, and of any other Judge of Her Majesty's High Court of Justice.—**(§ 14, p. 8).

This pension is to be the same amount which at present might, under the same circumstances, be granted to a puisne Justice of the Court of Queen's Bench. By 39 Geo. III., c. 110, s. 7, the pension to such a puisne justice is fixed at £2,000 on the terms fully set out in the previous note, on "The pension to the Lord Chief Justice of England." By 53 Geo. III., c. 153, s. 1, an additional pension not exceeding £600 is granted, and by 6 Geo. IV., c. 84, s. 4, a further pension of £900, making a total of £3,500.

**NOTE 50.—Court of Record.—**(§ 16, p. 9.)

A Court of Record is that where the Acts of judicial proceedings are enrolled in Parliament for a perpetual memorial and testimony; which rolls are called the Records of Court, and are of such high super-eminent authority that their

truth is not to be called in question. For it is a settled rule and maxim that nothing shall be averred against a record, nor shall any plea, or even proof, be admitted to the contrary (Co. Litt. 260). And if the existence of a record be denied, it shall be tried by nothing but itself; that is upon bare inspection whether there be any such record or no; else there would be no end of disputes. But if there appear any mistake of the Clerk in making up such record, the Court will direct him to amend it. All Courts of Record are the Courts of the Sovereign in right of the Crown and Royal dignity (Finch L. 231); and, therefore, every Court of Record has authority to fine and imprison for contempt of its authority (8 Rept. 38 b; Hawk. b. 2, c. 22, s. 1; Bac. Abr. Courts, E.; R. v. Clement, 4 B. and Ald. 233; R. v. Davison, 5 B. and Ald. 337; R. v. James, *ibid.*, 894. As to attachment for contempt of court generally, see Miller v. Knox, 4 Bing. N. C. 574; Doe d. Cardigan v. Bywater 7 C. B. 794. As to contempt committed in a County Court, see 9 and 10 Vict., c. 96, s. 113; 12 and 13 Vict., cap. 101, s. 2; Levy v. Moylan, 10 C. B. 189), while on the other hand the very eviction of a new jurisdiction, with power of fine or imprisonment, makes it instantly a Court of Record (see Groenvelt v. Burwell, Salk. 200; Grenville v. College of Physicians, 12 Mod. 388.) But the Courts not of Record, or those of them at least in which the common law is administered, are of inferior dignity, and in a less proper sense the King's Courts—and these are not intrusted by the law with any power to fine or imprison the subjects of the realm, unless by the express provision of some Act of Parliament (Dyson v. Wood, 3 Barn. and Cress. 449.) In these also the proceedings are not enrolled or recorded; but as well their existence, as the truth of the matters therein contained, shall, if disputed, be tried and determined by a jury. (2 Inst. 311; 8 Rept. 38 b; 11 Rept. 43 b; 3 Bl. Com. 24.—3 Step. Black. 380.

**NOTE 51.—The Jurisdiction of the High Court of Chancery as a Common Law Court as well as a Court of Equity.**—(§ 16, p. 9.)

The jurisdiction of the High Court of Chancery has been thus divided. (What. Dic. tit. "Chancery") :—

1st. The Common Law or Ordinary jurisdiction by which the Lord Chancellor is a privy councillor, and prolocutor of the House of Lords. The writs for a new parliament issue out of this department; but in case of a vacancy during the session, the Speaker, on the motion of a member, directs the Clerk of the Crown, by warrant to issue a new writ. The Petty Bag Office is in this jurisdiction; it is a Court of Common Law and of Record: pleas of *scire facias* to repeal letters patent are here exhibited, together with many other matters and all original writs issue hereout, see 11 and 12 Vict., c. 94; 12 and 13 Vict., c. 109; and *Gen. Ords.*, 29th Dec., 1848.

2nd. The Statutory jurisdiction. Under the head of jurisdiction, the Lord Chancellor exercises the power conferred by the celebrated *Habeas Corpus* Act, inquires into charitable uses, and formerly heard Appeals in Bankruptcy recently exercised by the Lords Justices of Appeal. Under it also, the Judges in Chancery were intrusted with numerous authorities which were conferred upon them wholly and solely by acts of parliament. The statutes which regulate or enlarge the Equity jurisdiction are not to be classed under this division.

3rd. The Specially Delegated Jurisdiction. Under this head the Lord Chancellor and the Lords Justices of Appeal had exclusive authority over the persons and property of idiots and lunatics.

4th. The Equity or Extraordinary jurisdiction which is distributable into these subdivisions, namely :—

(1.) The Assistant, being auxiliary to the Common Law, under which range matters of—

- (a) Discovery for the promotion of substantive justice at Common Law.
- (b) Preservation of testimony relating to a question at law, from persons not being the litigants.
- (c) Removal of improper impediments, and prevention of unconscientious defences, at Common Law.
- (d) Giving effect to, and relieving from the consequences of, Common Law judgments.

(II.) The Concurrent with the Common Law, comprehending—

- (a) The remedial correction of fraud.
- (b) The prevention of fraud by injunction.
- (c) Accident.
- (d) Mistake.
- (e) Account.
- (f) Dower.
- (g) Interpleader.
- (h) The delivery up of documents and specific chattels.
- (i) The specific performance of agreements. And

(III) The Exclusive, relating to—

- (a) Trusts.
- (b) Infancy.
- (c) The equitable rights of wives.
- (d) Legal and equitable mortgages.
- (e) The assignment of choses on action.
- (f) Partition.
- (g) The appointment of receivers.
- (h) Charities or Public Trusts.

See also notes, "The Lord Chancellor;" "The High Court of Chancery of England;" "The Master of the Rolls;" "The several Vice-Chancellors of the High Court of Chancery."

**NOTE 52.—The Jurisdiction of the Court of Queen's Bench.—**  
(§ 16, p. 2.)

The jurisdiction of the Court of Queen's Bench was most high. It kept all inferior jurisdictions within the bounds of their authority, and might, either by writ of *certiorari*, remove their proceedings to be determined there or by writ of *prohibition*, prohibit their progress below. It superintended all civil corporations in the kingdom. By writ of *mandamus*, it commanded magistrates to do what their duty required in every case where there was no other specific remedy. By writ of *habeas corpus*, it protected the liberty of the subject by speedy and summary interposition. It took cognizance both of criminal and civil causes; the former in what was called the crown side or crown office; the latter in the plea side of the court. On the crown side it took cognizance of all criminal causes from high treason down to the most trivial misdemeanour, or breach of the peace. Into it also indictments from all inferior courts might be removed by writ of *certiorari*, and might be tried either at bar or at *Nisi Prius*, or in some extreme cases at the Central Criminal Court under 19 and 20 Vict., c. 16.

On the plea side it exercised a general jurisdiction over all actions between subject and subject, with the exception of real actions and suits concerning the revenue. Its jurisdiction in civil actions was formerly limited to trespass or injuries said to have been committed *vi et armis*, but by means of fictitious proceeding called *Bill of Middlesex* and *Latitat*, it usurped jurisdiction over all personal actions. It recently exercised a direct jurisdiction in all such actions by virtue of 2 WILL IV., c. 39, which abolished these fictitious proceedings. Error lay from this Court to the Exchequer Chamber. The matters comprised within the civil jurisdiction of this Court have been thus classed.

(I.) Formal or plenary.

- (1) Personal actions.
- (2) Mixed action of ejectment.

(II.) Summary.

- (1) Annuities and mortgages (15 and 16 Vict., c. 76, ss. 219-220.)
- (2) Arbitrations and awards.
- (3) *Habeas Corpus* Act (31 Car. II., c. 2, extended by 56 Geo. III., c. 100).
- (4) Interpleader Act (1 and 2 WILL IV., c. 58).
- (5) Over officers of the Court.
- (6) Warrants of attorney, cognovits, and judges' orders for judgment.

(III.) Auxiliary.

- (1) Answering a special case.
- (2) Enforcing judgments of inferior Courts of Record.

(3) *Prerogative Mandamus* to compel inferior Courts or officers to Act, see 17 and 18 Vict. c. 125, ss. 75-77.

(4) Prohibition.

(5) *Quo warranto*.

(6) Trying an issue in fact from a Court of equity or a feigned issue.

(IV.) Appellate.

(1) Appeal from the decisions of justices of the peace in giving possession of deserted premises to landlords, under 11 Geo. II., c. 19, ss. 16-17.

(2) Writs of error from certain inferior Courts of Record (17 and 18 Vict., c. 125, s. 102).

(3) Writs of false judgment from inferior Courts not of record, but proceeding according to the course of the common law.

(4) Appeals by way of a case from the summary jurisdiction of justices of the peace on questions of law (20 and 21 Vict., c. 43; Order of Court, 25th November, 1857).

See also notes, "The Judges;" "The Superior Courts of Common Law;" "The Court of Queen's Bench;" "The Lord Chief Justice of England."

**NOTE 53.—The Jurisdiction of the Court of Common Pleas at Westminster.**—(§ 16, p. 2.)

The Court of Common Pleas took cognizance of all actions between subject and subject without exception, including formerly the extensive class of real actions, of which it retained the few surviving species. And over remedies of this kind (which formerly excelled all others in importance), it had always exercised an *exclusive* jurisdiction; as it did also over fines and recoveries, while these modes of assurance existed, and still did over the forms of conveyance substituted for them. For these reasons, and also because its authority in these matters was original, and not usurped (as in the case of the Exchequer and Queen's Bench), it had always been considered as the principal seat of learning relative to ordinary actions between man and man, and is styled by Lord Coke (4 Inst. 99), the lock and key of the common law. It had exclusive jurisdiction in cases of appeal from the barristers appointed to revise the lists of Parliamentary Voters (6 and 7 Vict., c. 18).

The jurisdiction of the Court of Common Pleas at Westminster was altogether confined to civil matters having no cognizance in criminal cases, and was concurrent with that of the Queen's Bench and Exchequer in personal actions and ejectment. Wharton thus divides its exclusive or peculiar jurisdiction:—

(I.) Formal or plenary.

Real actions.

(II.) Summary.

Under the Railway and Canal Traffic Act, 1854 (17 and 18 Vict., c. 31).

(III.) Auxiliary.

(1) Registration of judgments, annuities, &c. 1 and 2 Vict., c. 110; 2 and 3 Vict., c. 11; 3 and 4 Vict., c. 82; 18 Vict., c. 15.

(2) Under 3 and 4 Wm. IV., c. 74, respecting the fees connected with conveyances executed by virtue of the Act, and also with the examination of married women concerning their assurances (see 11 and 12 Vict., c. 70; 17 and 18 Vict., c. 75; 19 and 20 Vict., c. 108, s. 73).

IV Appellate.

Appeals from the Revising Barristers' Courts, under 6 and 7 Vict., c. 18.

See also notes, "The Judges," "The Superior Courts of Common Law," "The Court of Common Pleas."

**NOTE 54.—The Jurisdiction of the Court of Exchequer.**—(§ 16, p. 2.)

The jurisdiction of this Court is given in the note on "The Court of Exchequer," containing Blackstone's history of the Court.

Its jurisdiction has been thus concisely described:—In addition to the concurrent jurisdiction it enjoyed in common with the other superior Courts, the Court of Exchequer had exclusive jurisdiction in informations at the suit of

the Attorney General to recover debts and duties due to the Crown in action for penalties incurred under the Stamp Act, and generally in cases where the public revenue came in question, and which did not amount to an indictable offence, or was not cognisable by the commissioners of assize, or justices of the peace. [Petersdorff's Abrid. tit. "Court of Exchequer."]

Where an action had been brought in either the Court of Common Pleas or Queen's Bench, in which the interest of the Crown was concerned, the Court of Exchequer would, on the application of the Attorney General, without affidavit, make a rule absolute in the first instance to remove the cause into the latter court. *Adams v. Freemanille*, 2 Ex., 543. In such a case two day's notice of the motion was sufficient. *Attorney General v. Hallet*, 15 Mee, and W. 97; 3 D. and L. 685.

Formerly the Court of Exchequer had a general equitable jurisdiction; but this had been transferred to the Court of Chancery by the 5 Vict., c. 5. its equity jurisdiction in revenue cases, however still remained. *Attorney General v. Halling*, 15 Mee and W. 687. *Attorney General v. Corporation of London*, 8 Beau. 270; H. of L. C. 440.

**NOTE 55.—The Jurisdiction of the High Court of Admiralty.—**  
(§ 16, p. 9).

The Admiralty Courts—of which there are two divisions, the Instance Court and the Prize Court—had jurisdiction and power to try and determine all maritime causes or injuries on the high seas. Generally speaking, and with the exception of any case otherwise specially provided for by Act of Parliament all admiralty causes must be causes arising wholly upon the sea, and not within the precincts of any county. For the statute, 13 Ric. II., c. 5, directs that the admiral and his deputy shall not meddle with anything, but only things done upon the sea; and the statute 15 Ric. II., c. 3, declares that the Court of the Admiral hath no manner of cognizance of any contract or of any other thing done within the body of any county (as to what is *infra corpus comitatus*, see Com. Dig. Admiralty (E. 14); Jac. Law Dict. "Admiral"), either by land or by water, nor of any wreck of the sea, for that must be cast on land before it becomes a wreck. It is provided, however, by the statute, 17 and 18 Vict. c. 104, ss. 460, 464, 468, 476, 492-498, that the Court of Admiralty shall, in certain cases, have jurisdiction on claims of *salvage*, and by sect. 476, that such jurisdiction shall attach whether the salvage service was performed at sea or by land or partly at sea, and partly by land. But it is otherwise of things, *notam*, *jetsam*, and *ligan*; for over them the admiral hath jurisdiction, as they are in and upon the sea. If part of any contract (or other cause of action) arose upon the sea and part upon the land, the common law excluded the Admiralty Court from its jurisdiction: for, part belonging properly to one cognizance, and part to another, the common or general law took place of the particular (Co. Litt. 261). Therefore, though pure maritime acquisitions, which were earned and became due on the high seas—as seamen's wages—were one proper object of the admiralty jurisdiction, even though the contract for them were made upon land (1 Vent., 146. But, as to claim for wages under £50, see 17 and 18 Vict., c. 104, ss. 188-189; and 24 and 25 Vict., c. 10, s. 10), yet in general if there were a contract made in England, and to be executed upon the seas—as a charter-party or covenant that a ship shall sail to Jamaica, or shall be in such a latitude by such a day; or a contract, made upon the sea to be performed in England—as a bond made on shipboard to pay money in London, or the like; these kinds of mixed contracts belonged not to the admiralty jurisdiction, but to the courts of common law (see Bridgman's case, Hob. 23; Hale. Hist. C. L. 35; Le Caux. v. Eden, Doug. 572). It is to be observed, however, that where the Admiralty Court had jurisdiction of the original subject matter in the cause it had also jurisdiction of all consequential questions, though properly determinable at common law (13 Rep. 53; Ridley v. Eggesfield, 2 Lee 25; Hardr. 183). Wherefore, among other reasons, a suit for beaconage of a beacon standing on a rock in the sea might be brought in the Court of Admiralty, the admiral having an original jurisdiction over beacons (Crosse v. Digges, 1 Sid. 158).

In addition to his general jurisdiction over maritime causes the Judge of the Admiralty had a special commission from the Crown to adjudicate on *prize of*

war (2 Chit. Gen. Pr. 538a; 1 Doug. 594; *Lindo v. Rodney*, 2 Doug. 613a; *Mitchell v. Rodney* (in error), 2 Bro. P. C. 423; *Faith v. Pearson*, 6 Taunt. 439, and moreover had to decide on *booty of war* (i.e. prize on shore), when specially referred to him by Her Majesty (3 and 4 Vict., c. 65, s. 22).

**NOTE 56.—The Jurisdiction of the Court of Probate.—**(§ 16, p. 9.)

By the third section of the "Court of Probate Act, 1857," it is enacted that "the voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial and other courts, and persons in England at the passing of the act, having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall, in respect of such matters, absolutely cease, and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of, or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person."

The fourth section provides that, "the voluntary and contentious jurisdiction and authority, in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in, or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in Her Majesty, and shall, except as hereinafter is mentioned, be exercised in the name of Her Majesty, in a court to be called the Court of Probate, and to hold its ordinary sittings, and to have its principal registry at such place or places in London or Middlesex as Her Majesty in Council shall from time to time appoint."

As this act had omitted to transfer the custody of and legal succession to the personal estate of persons deceased, which had been theretofore vested in the *ordinarius loci*, the "Court of Probate Act, 1858," partially supplied the defect by its nineteenth section, as follows, viz:—"From and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the Judge of the Court of Probate for the time being in the same manner and to the same extent as heretofore they vested in the ordinary."

The twenty-third section of "The Court of Probate Act, 1857," provides that, "The Court of Probate shall be a court of record, and such court shall have the powers, and its grants and orders shall have the same effect throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the Prerogative Court of the Archbishop of Canterbury, and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary, and those effects of deceased persons which are within the jurisdiction of the said Prerogative Court; and all duties which by statute, or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said Prerogative Court in respect of probates, administrations, or matters or causes testamentary, within their respective jurisdictions, shall be performed by the Court of Probate: provided that no suits for legacies or suits for the distribution of residues shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary, is hereby abolished."

**NOTE 57.—The Jurisdiction of the Court for Divorce and Matrimonial Causes.—**(§ 16, p. 9.)

In January, 1858, the Divorce Act (20 and 21 Vict., c. 85) came into operation and the jurisdiction of the Ecclesiastical Courts in England in respect of all suits and matters matrimonial except so far as relates to the granting of marriage licenses was transferred to the Court for Divorce and Matrimonial causes. The Act also gave the Court a jurisdiction to dissolve marriages, and to deal with the property of persons whose marriage was dissolved, and with the custody of their children. Any husband may obtain a dissolution of his marriage upon proving to the satisfaction of the court that his wife has been guilty of adultery; and any wife may obtain a dissolution who can prove that

her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy, or of bestiality, or of adultery, coupled with cruelty, or with desertion without reasonable excuse for two years and upwards (ss. 27 and 31). But if the petitioner has been accessory to or conniving at the adultery or the other party to the marriage, or has condoned the adultery complained of, or has presented or prosecuted the petition in collusion with the other parties to the suit, the court is bound to dismiss the petition (s. 30). And if the petitioner has been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect, or misconduct, as has conduced to the adultery, the court has a discretionary power either to pronounce or refuse a decree (s. 31).

It is not known by what surname a woman can properly be known after she is divorced from a husband by a decree of dissolution of marriage. A woman judicially separated from a husband retains his name; and one whose marriage has been adjudged null and void reverts to her maiden name.

Divorces *a mensa et thoro* are abolished by the Act, and judicial separations are substituted (ss. 6-7). A sentence of judicial separation may be obtained, either by a husband or wife, on the ground of adultery or cruelty, or desertion, without cause for two years and upwards. A sentence of judicial separation has the same force and effect as a divorce *a mensa et thoro* formerly had (ss. 7-16), it also places the wife in the position of a *feme sole* with respect to property from the date of the sentence as long as the separation continues, and in the event of her dying intestate, her property is dealt with as if her husband were dead (s. 25). She is also considered as a *feme sole* for the purposes of contracts, wrongs, and injuries, and suing and being sued in any civil proceedings (s. 26). Her husband is in no way liable for her contracts or torts, except in cases where he has neglected to obey an order for the payment of alimony to her when he is liable for necessities (s. 26).

The law respecting the jurisdiction of the courts of one country to determine the validity or invalidity of marriage contracts between subjects of another country, or between subjects of their own country who have been married abroad, and respecting their jurisdiction to dissolve such marriages is so uncertain and unsettled, that it is impossible to give a clear or correct summary of it. It may, however, be useful to direct attention to a few of the principal decisions since the passing of the Divorce Act.

An English court has jurisdiction to enquire into and determine the validity or invalidity of any marriage which has been solemnised in England. Thus, were two French persons came to this country for the purpose of evading the law of France and were married here, and returned immediately after the marriage, and the marriage was held null and void by the French court, the English Court held it to be valid (*Simonin v. Mallac*, 2, *Su. and Tr.* 67).

In a case where marriages were alleged to have taken place in Scotland and in Ireland, but the husband had never been domiciled in England, the Court refused to entertain a petition for restitution of conjugal rights presented by the wife (*Yelverton v. Yelverton* 1, *Su. and Tr.* 574).

In suits for dissolution by a husband it is necessary to satisfy the court that the husband has a *bona fide* domicile in England at the time of the commencement of the suit (*Brodie v. Brodie* 2, *Su. and Tr.* 259).

But in one case where it did not appear whether the husband's domicile was English or Irish, the court made a decree at the instance of the wife (*Bond v. Bond* 2, *Su. and Tr.* 93).

In another case where the husband and wife had abandoned their English domicile, and settled in America, where the husband deserted the wife, and contracted a marriage with another woman, the court dissolved the first marriage at the wife's prayer (*Deck v. Deck* 2, *Su. and Tr.* 91).—Whart. Dic. tit. "Divorce"

**NOTE 58.—The Jurisdiction of the London Court of Bankruptcy.**—(§ 16, p. 10.)

The 59 and 60 sections of the Bankruptcy Act, 1869, provides:—

"59. From and after the commencement of this Act the following provisions

shall take effect with respect to the Court having jurisdiction in bankruptcy, and their offices; that is to say,

If the person sought to be adjudged a bankrupt, reside or carry on business within the London Bankruptcy District as hereinafter defined, or be not resident in England, then "the Court" shall mean for the purposes of this Act the Court of Bankruptcy in London as constituted by this Act, and hereinafter referred to as the London Bankruptcy Court.

If the person sought to be adjudged a bankrupt, being resident in England, do not reside or carry on business within the London Bankruptcy District, then "the Court" shall, subject to the provisions hereinafter contained for removing the proceedings, mean the County Court of the district in which such person resides or carries on business hereinafter referred to as the local Bankruptcy Court.

60. The London Bankruptcy District shall, for the purposes of this Act, comprise the following places: that is to say, the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any County Court described as a metropolitan County Court in the list contained in the second schedule hereto."

The second schedule to the Act was as follows:—

#### SCHEDULE II.

The Bloomsbury County Court of Middlesex.  
The Bow County Court of Middlesex.  
The Brompton County Court of Middlesex.  
The Clerkenwell County Court of Middlesex.  
The Lambeth County Court of Surrey.  
The Marylebone County Court of Middlesex.  
The Shoreditch County Court of Middlesex.  
The Southwark County Court of Surrey.  
The Westminster County Court of Middlesex.  
The Whitechapel County Court of Middlesex.

In *Ex p. Buckland re Buckland* (L. J. Notes of Cases, vol. 8, p. 18, 1873), the debtor in this case had presented a petition in liquidation in the Greenwich County Court. He lived in the New Cross Road. In a list issued by the Queen's printers, New Cross was given as in the district of the Greenwich County Court; but the district really ended where the Croydon railway crossed the New Cross Road, and the debtor lived beyond the limit. The first meeting of the creditors had been held, and resolutions passed for liquidation by arrangement, and the appointment of a trustee. Before the meeting to confirm the resolution the mistake was discovered. The creditors, however, confirmed the resolutions, and passed a further resolution for the transfer of the proceedings to the London Court of Bankruptcy. The registrar of the County Court refused to register these resolutions, on the ground that the Court had no jurisdiction, and that the proceedings were altogether void. The Chief Judge made an order to transfer. See also *Ex p. Charles re Charles*, before the Chief Judge (March 11, 1872), reported in Roche and Hazlett's Bankruptcy Practice, 2nd Ed., p. 374, and L. R. 13, Eq. 638; *Revell v. Blake*, 20, W. R. 675, and 7 L. J. Notes of Cases, 91; in re Bragg, 6 L. T. N. S. 197 Bank, and see also the 26th of General Rules, 1870.

#### NOTE 59.—The Court of Common Pleas at Lancaster.—(§ 16, p. 10.)

The principal Statutes relating to this Court are as follows:—

As to manner of signing judgment in the Court, see 8 Geo. I., c. 25; 1 and 2 Vict., cap. 110.

As to practice and proceedings in the Court, see 1 Will. IV., c. 7; 4 and 5 Will. IV., c. 62; 15 and 16 Vic., c. 76; 17 and 18 Vic., c. 125, s. 100; 18 and 19 Vict., c. 45; 23 and 24 Vict., c. 126; 32 and 33 Vic., c. 37.

As to recovery out of jurisdiction of judgment in the Court, see 4 and 5 Will. IV., c. 62.

As to removal into the Court of Cause from Inferior Court, see 34 Geo. III., c. 58.

As to examination of witnesses in the Court on interrogatories, or on commission, see 1 Will. IV., c. 22.

As to alteration of place of holding the Court, see 3 and 4 Will. IV., cap. 71.



- As to subpoena for witness valid out of the jurisdiction, see 4 and 5 Will. IV., c. 62.
- As to new trial in the Court, to be moved for in Courts at Westminster, see 4 and 5 Will. IV., c. 62.
- As to fees in the Court, see 4 and 5 Will. IV., c. 62.
- As to district prothonotaries in, see 32 and 33 Vict., c. 37.
- As to enforcing writs and judgments in the Court, see 32 and 33 Vict., c. 37, s. 15.
- As to hearing, by Courts at Westminster, of applications to the Court, see 32 and 33 Vict., c. 37, s. 7.
- As to pleadings and proceedings in avowry in the County of Lancaster, see 18 and 19 Charles II., c. 10; Geo. II., c. 19, s. 22.
- As to registry of judgments, and other subjects, see Acts mentioned in note, "County Palatine."

#### NOTE 60—Lancaster.—(§ 16, p. 10.)

The County of Lancaster was erected into a Palatine in the reign of Edward III. (see note "County Palatine") and granted by him to his son John for life, that he should have *jura regalia* and a king-like power to pardon treasons, outlawries, &c., and make Justices of the Peace and Justices of Assize within the County, and all processes and indictments to be in his name. It is now vested in the Crown. The Northern and Southern Divisions of the County are two different venues. The principal Statutes relating to County Palatine, to the Common Pleas of Lancaster, and the Duchy of Lancaster, are given in the notes of those subjects. Those relating to the County of Lancaster are as follows:—

- As to Clerk of Assize in the County of Lancaster, see 33, Hen. VIII., c. 24.
- As to writs of exigent and proclamations against persons in and arrest in County of Lancaster, see 5 and 6 Edw. VI., c. 26; 4 and 5 Will. 4, c. 62; 32 and 33 Vict., c. 62.
- As to proceedings in County of Lancaster against Crown receivers, see 27 Eliz., c. 3.
- As to taking affidavits for Courts of County of Lancaster, see 16 and 17 Chas. II., c. 9; 17 Geo. II., c. 7; 16 and 17 Vict., c. 78.
- As to replevins and avowries in County of Lancaster, see 18 and 19 Chas. II., c. 10.
- As to jurisdiction of, practice and proceedings in, and appeal from and payment of money into Court of Chancery of County of Lancaster, see 13 and 14 Vict., c. 43; 17 and 18 Vict., c. 82; 21 and 22 Vict., c. 27.
- As to purchase of land, when authorized by Special Act, Provisional Order, &c., entitled in County Palatine of Lancaster, and substitution of Court of Chancery of County Palatine of Lancashire in certain cases for Court of Chancery, see 13 and 14 Vict., c. 43, s. 12; 17 and 18 Vict., c. 82, s. 13.
- As to abolition by jurisdiction of Chancery Court of Lancaster over lunatics found so by inquisition, see 13 and 14 Vict., c. 43, s. 23.
- As to Commissions of Assize in County of Lancaster, see 18 and 19 Vict., c. 45.
- As to duties and salary of Clerk of Crown in County of Lancaster, see 19 and 20 Vict., c. 118.
- As to determination by Court of Chancery of County of Lancaster of all questions of law and fact, see 25 and 26 Vict., c. 42.
- As to appointment, duties, and salaries of Clerk and Deputy-Clerk of the Peace, in the County of Lancaster, see 34 and 35 Vict., c. 73.

#### NOTE 61.—The Court of Pleas at Durham.—(§ 16, p. 10.)

The jurisdiction of the County Palatine, of Durham, was, until a very recent period, vested in the Bishop of Durham, see note, "County Palatine."

The principal statutes connected with Durham and its Court of Pleas are as follows:—

- As to process of Exigent in Durham, see 31 Eliz., c. 9.

As to judgment in Court of Pleas of Durham, see 8 Geo. I., c. 25; 1 and 2 Vict., c. 110.

As to taking oaths and affidavits in Durham, see 4 Geo. III., c. 21.

As to order of Court of Pleas for examination of witnesses and interrogatories, see 1 Will. IV., c. 22.

As to palatine jurisdiction and jura regalia transferred to the Crown, see 6 and 7 Will. IV., c. 19.

As to appointment of Custos rotulorum in Durham, see 6 and 7 Will. IV., c. 19.

As to election removal and fees of Coroners in Durham, see 7 Will. IV. and 1 Vict., c. 64.

As to practice and proceedings in Court of Pleas in Durham, see 2 and 3 Vict., c. 18; 15 and 16 Vict., c. 76; 17 and 18 Vict., c. 125 s. 100; 23 and 24 Vict., c. 128.

As to provisions for University of Durham, see 3 and 4 Vict., c. 113 s. 37; 4 and 5 Vict., c. 39.

As to duties and salaries of Clerks of the Crown in Durham, see 19 and 20 Vict., c. 118.

As to transfer of forfeitures, escheats, mines, jura regalia, &c., and foreshores of Durham to Crown, and payment of half of rent, &c., of foreshores to Ecclesiastical Commissioners, see 21 and 22 Vict., c. 45.

As to the abolition of office of Cursitor of Court of Chancery, see 32 and 33 Vict., c. 84.

#### NOTE 62.—County Palatine.—(§ 17, p. 10.)

The word 'palatine' is derived from the Latin *Palatium*—a court.

There were formerly three of these counties—Chester, Durham, and Lancaster. The two former were such by immemorial custom, the latter was created by Edward the Third. The Bishop of Durham and the Duke of Lancaster had Royal power within their respective counties. They could pardon treasons, murders, and felonies; they appointed judges and magistrates; all writs and indictments ran in their names, and offences were said to be done against their peace, and not *contra pacem domini regis*. The 11 Geo. IV. and 1 Will. IV., c. 70, abolished the Court of Session of the County Palatine of Chester, and subjected the county in all things to the jurisdiction of the superior courts at Westminster. Other Acts, which will be found in the notes under the respective heads of Lancaster and Durham, regulated and made conformable, the proceedings in the courts in those counties. The counties palatine are now in the hands of the Crown; the jurisdiction of Durham is vested as a separate franchise and Royalty in the Crown by 6 and 7 Will. IV., c. 19. Lancaster was vested in the Crown by Henry the Fourth, separated, indeed, from the other possessions of the Crown in order and Government, but united in point of inheritance.

The principal Acts on the subject of Counties Palatine are as follows:—

As to process of exigent and outlawry in a County Palatine, see 6, Hen. VIII., c. 4.

As to writs, indictments, &c., in Counties Palatine, to be in Queen's name, see 27 Hen. VIII., c. 24.

As to replevin in Courts of Counties Palatine, see 18 and 19 Chas. II., c. 10.

As to frivolous suits in Counties Palatine, see 11 Will. III., c. 9.

As to taking bill pro. confesso in Courts of Chancery of Counties Palatine, see 2 Geo. IV., and 1 Will. IV., c. 56.

As to registry of judgments in Counties Palatine, see 1 and 2 Vict., c. 110; 2 and 3 Vict., c. 11; 3 and 4 Vict., c. 82; 18 and 19 Vict., c. 15; 22 and 23 Vict., c. 35.

As to Counties Palatine being in Circuit, see 1 Geo. IV., c. 55.

#### NOTE 63.—Lunatics.—(§ 17, p. 10.)

The principal statutes in connection with this subject are as follows:—

As to custody of land of lunatic by Crown, see *Prerog. Reg. stat. temp. inc.* cc. 11-12.

(1.) *Found so by inquisition.*

As to lunatic not to marry until declared sane by Lord Chancellor, see 61 Geo. III., c. 37.

As to abolition by jurisdiction of Chancery Court of Lancaster over lunatics, see 13 and 14 Vict., c. 43, s. 23.

As to clerk of the custodies of lunatics, abolition of office of, see 5 and 6 Vict., c. 84, s. 10.

As to jurisdiction of Lord Chancellor and Lords Justices of Appeal over lunatics, see 15 and 16 Vict., c. 87, s. 15; 16 and 17 Vict., c. 70; 30 and 31 Vict., c. 87, s. 13.

As to masters in lunacy, appointment, powers, salary, &c., of, see 8 and 9 Vict., c. 100, s. 2; 16 and 17 Vict., c. 70, s. 6, &c.; 25 and 26 Vict., c. 86; 32 and 33 Vict., c. 91, s. 13.

As to Registrar, visitors, and other officers in lunacy, see 16 and 17 Vict., c. 70, s. 10, &c.; 25 and 26 Vict., c. 86; 32 and 33 Vict., c. 91, s. 13.

As to pensions, &c., to officers in lunacy, see 29 and 30 Vict., c. 68.

As to per-centages on incomes of lunatics and fees in lunacy, see 16 and 17 Vict., c. 70, s. 26, &c.; 32 and 33 Vict., c. 91, s. 16.

As to commissions directing masters to hold inquisition, inquiry with or without jury, and return or certificate of master having force of inquisition, see 16 and 17 Vict., c. 70, ss. 38-54; 25 and 26 Vict., c. 86.

As to inquiry before jury in Common Law Court, examination of alleged lunatic, and power of Lord Chancellor to order new trial, see 25 and 26 Vict., c. 86, ss. 3-9.

As to traverse of inquisition, new trial, and supersedeas absolute or conditional, see 16 and 17 Vict., c. 70, ss. 148-152; 25 and 26 Vict., c. 86, s. 10.

As to transmission of transcript of record of inquisition or supersedeas from England to Ireland, and vice versa see 16 and 17 Vict., c. 70, s. 52.

As to proceedings after inquisition:—(I.) evidence and witnesses before master, see 16 and 17 Vict., c. 70, s. 55, &c.; 25 and 26 Vict., c. 86, s. 18.

(II.) grant of custody of person and estate of lunatic to committee, security by, and accounts of committee, &c., see 16 and 17 Vict., c. 70, s. 62, &c. (III.) proposals to master as to management of estate and report, see 16 and 17 Vict., c. 70, s. 69, &c. (IV.) inquiry as to next of kin, attendance at proceedings, &c., see 16 and 17 Vict., c. 70, s. 75, &c. (V.) delivery out by master of deeds or will, see 16 and 17 Vict., c. 70, ss. 65-84.

As to orders in lunacy, see 16 and 17 Vict., c. 70, ss. 98-102; 25 and 26 Vict., c. 86, s. 29.

As to visitation of lunatics by visitors and report, see 16 and 17 Vict., c. 70, ss. 106-107; 25 and 26 Vict., c. 86, ss. 19-22.

As to management of property of lunatic by committee, admittance to copy-holds, surrender and renewal of leases, charge of expenses of improvement on estate, performance of contracts, dissolution of partnership and conveyance of partnership property, partition, sale, exchange, building and mining leases, exercise of powers, trusts, guardianships, &c., appointment of new trustees, transfer of stock, &c., see 16 and 17 Vict., c. 70, ss. 108-147; 18 and 19 Vict., c. 13; 25 and 26 Vict., c. 86, s. 17.

As to power to charge property of lunatic with debts, and for maintenance, &c., see 16 and 17 Vict., c. 70, ss. 116-117; 25 and 26 Vict., c. 86, s. 16.

As to application of property where small, for maintenance or benefit of lunatic without grant of custody of estate, see 16 and 17 Vict., c. 70, s. 120.

As to application of property for maintenance when lunacy temporary, see 16 and 17 Vict., c. 70, s. 121.

As to exercise by committee of powers under Leases and Sales of Settled Estates Acts, see 19 and 20 Vict., c. 120, s. 36.

As to power of Lord Chancellor to make general orders, see 16 and 17 Vict., c. 70, s. 153; 25 and 26 Vict., c. 86, s. 14.

As to taxation and payment of costs of attorney after death of lunatic, see 23 and 24 Vict., c. 127, s. 29.

(2.) *Not so found by inquisition.*

As to commissioners in lunacy their appointment, salary, powers, &c., see 8 and 9 Vict., c. 100; 16 and 17 Vict., c. 96; 17 and 18 Vict., c. 94; 18 and 19 Vict., c. 105; 22 Vict., c. 28, s. 15; 25 and 26 Vict., c. 111; 32 and 33 Vict., c. 91, s. 13.

As to appointment of visiting justices, see 8 and 9 Vict., c. 100.

As to licensing by commissioners and justices of houses for reception of lunatics, regulations for government of such houses, residence of proprietor, or medical officer, &c., see 8 and 9 Vict., c. 100, s. 24, &c.; 16 and 17 Vict., c. 96; 18 and 19 Vict., c. 105, s. 9; 25 and 26 Vict., c. 111, ss. 14-17.

As to regulation, resident medical officer, and registration of hospitals receiving lunatics, see 8 and 9 Vict., c. 100, s. 43; 16 and 17 Vict., c. 96, s. 30.

As to reception of patients into licensed houses and hospitals on medical certificate, entry, &c., of admission, escape, recapture, discharge, removal, death, &c., of patients, and returns to Commissioners, see 8 and 9 Vict., c. 100, s. 50, &c.; 16 and 17 Vict., c. 96; 18 and 19 Vict., c. 105, s. 9; 25 and 26 Vict., c. 111.

As to reception of pauper patients, see 16 and 17 Vict., c. 96, s. 7.

As to order for admission of lunatic so found by inquisition, see 25 and 26 Vict., c. 111, s. 22.

As to ill-treatment of patients, see 8 and 9 Vict., c. 100, s. 56; 16 and 17 Vict., c. 96, s. 9.

As to conniving at escape of patient, see 25 and 26 Vict., c. 111, s. 39.

As to medical attendance and medical visitation, see 8 and 9 Vict., c. 100, s. 57, &c.; 16 and 17 Vict., c. 96.

As to discharge or removal of patient by person giving order for admission, or by commissioners or visiting justices, see 8 and 9 Vict., c. 100, s. 72, &c.; 16 and 17 Vict., c. 96.

As to discharge or removal of pauper patients, see 8 and 9 Vict., c. 100, s. 74.

As to retention of discharged patient, see 16 and 17 Vict., c. 96, s. 6; 25 and 26 Vict., c. 111, s. 18.

As to correspondence of patients, see 25 and 26 Vict., c. 111, s. 40.

As to removal of patients for benefit of health, and temporary absence on trial, see 8 and 9 Vict., c. 100, s. 86; 18 and 19 Vict., c. 105, s. 17; 25 and 26 Vict., c. 111, s. 38.

As to visitation of licensed houses and hospitals by commissioners and visiting justices, inquiries and reports to Lord Chancellor, see 8 and 9 Vict., c. 100, s. 61, &c.; 16 and 17 Vict., c. 96, s. 32; 18 and 19 Vict., c. 105, s. 9; 25 and 26 Vict., c. 111, s. 29.

As to visitation by commissioners of asylums and gaols, see 8 and 9 Vict., c. 100, s. 110.

As to visitation by commissioners of workhouses, see 16 and 17 Vict., c. 96, s. 28.

As to visitation of lunatics under care of committees, state and criminal lunatics, and appointment of special visitors, see 8 and 9 Vict., c. 100, ss. 112-113; 16 and 17 Vict., c. 96, s. 33, &c.

As to reception of single patients in unlicensed houses, visitation by commissioners, &c., change of residence and removal of patient for benefit of health, discharge, report of death of patient, &c., see 8 and 9 Vict., c. 100, s. 90, &c.; 16 and 17 Vict., c. 96; 25 and 26 Vict., c. 111, s. 35.

As to inquiry as to property of lunatic, appointment of guardian, management of estate, power of guardian to receive dividends of stock, &c., see 8 and 9 Vict., c. 100, s. 94, &c.; 16 and 17 Vict., c. 48, s. 4; 16 and 17 Vict., c. 70, ss. 53, 54, 103; 16 and 17 Vict., c. 96.

As to power of attorney for receipt of dividends on stock of joint tenant, where one is lunatic or infant, see 33 and 34 Vict., c. 71, s. 19.

### (3.) Criminal.

As to acquittal of lunatic when tried for treason or felony and detention of, see 39 and 40 Geo. III., c. 84.

As to acquittal of lunatic when tried for misdemeanor, see 3 and 4 Vict., c. 54, s. 3.

As to discharge of lunatic so detained, as harmless, see 16 and 17 Vict., c. 96, s. 38.

As to maintenance of lunatic so detained, out of property, or by guardians out of common fund of union, see 3 and 4 Vict., c. 54, s. 3; 23 and 24 Vict., c. 75, s. 10; 27 and 28 Vict., c. 29; 30 and 31 Vict., c. 12.

As to application of property of lunatic so detained for maintenance, or benefit of lunatic, see 25 and 26 Vict., c. 96, s. 15.

As to apprehension, &c., of suspected lunatic endeavouring to gain admission to the Sovereign, see 39 and 40 Geo. III., c. 94, s. 4.

As to apprehension, &c., of suspected lunatic likely to commit crime, see 1 and 2 Vict., c. 14.

As to finding of insanity of person charged with naval offence, see 29 and 30 Vict., c. 109, s. 68.

As to inquiry by Secretary of State into state of mind of prisoner under sentence of death, see 27 and 28 Vict., c. 29.

As to removal to asylum of prisoner becoming insane—(I.) from Pentonville Prison, see 5 and 6 Vict., c. 29, s. 23; (II.) from Millbank Prison, see 6 and 7 Vict., c. 26, s. 21; (III.) from Whitecross-street Prison to Bethlehem Hospital, see 25 and 26 Vict., c. 104, s. 5; (IV.) when convicted of naval offence, see 29 and 30 Vict., c. 109, s. 80; (V.) and maintenance of, out of property, or by guardians out of common fund of union, see 3 and 4 Vict., c. 54; 27 and 28 Vict., c. 29.

As to asylum for criminal lunatics, removal there of prisoners acquitted on ground of insanity, or prisoners or convicts becoming insane, maintenance, temporary absence, absolute or conditional discharge of patients, escape, recapture, and penalty for ill-treatment of patients and removal of patients to county or other asylum on completion of sentence, &c., see 23 and 24 Vict., c. 75; 30 and 31 Vict., c. 12; 32 and 33 Vict., c. 78.

As to visitation of asylum by Commissioners, see 23 and 24 Vict., c. 75, s. 14.

As to removal from India to united kingdom of persons charged with offences, and acquitted on ground of insanity, and of other insane persons, and transmission to United Kingdom of transcript of proceedings relating to persons so removed, see 14 and 15 Vict., c. 81.

(4.) *Pauper.*

As to providing and repair of asylums for pauper lunatics in counties, boroughs, counties of cities, and counties of towns by committees of justices, union of counties, boroughs, &c., for that purpose, power to purchase lands, dissolution of unions, sale and exchange of lands, &c., and raising of money by rates, and mortgage of rates, see 16 and 17 Vict., c. 97; 18 and 19 Vict., c. 105; 19 and 20 Vict., c. 87; 25 and 26 Vict., c. 111; 26 and 27 Vict., c. 110; 28 and 29 Vict., c. 80; 34 and 35 Vict., c. 14, s. 2.

As to asylums in metropolis for sick and lunatic, medical relief, dispensaries, district schools, and training ships for, contributions of unions and parishes, and loans for those purposes and control by Poor Law Board, see 30 and 31 Vict., c. 6, ss. 1-59; 31 and 32 Vict., c. 122, ss. 11-35; 32 and 33 Vict., c. 63; 32 and 33 Vict., c. 67, s. 45; 32 and 33 Vict., c. 102, s. 37; 34 and 35 Vict., c. 15; 34 and 35 Vict., c. 108.

As to borough providing asylum not liable to contribute to county asylum, see 12 and 13 Vict., c. 82, s. 2.

As to appointment by justices of committee of visitors to superintend asylum, see 16 and 17 Vict., c. 97, s. 22, &c.

As to exercise by borough council of powers of justices, see 16 and 17 Vict., c. 97, s. 129; 18 and 19 Vict., c. 105, s. 6.

As to contract for reception of pauper lunatics into other county asylum, hospital, or licensed house, and admission into asylum of pauper lunatics from other counties, &c., and of lunatics not paupers, see 16 and 17 Vict., c. 97, ss. 42-43; 18 and 19 Vict., c. 105, s. 10; 25 and 26 Vict., c. 111, s. 7.

As to regulation and management of asylums, weekly rate for maintenance of lunatics, officers of asylums, their salaries, superannuation allowances, accounts, &c., see 16 and 17 Vict., c. 97, ss. 53-60; 25 and 26 Vict., c. 111, ss. 12-13.

As to visitation of asylums by visitors and reports, see 16 and 17 Vict., c. 97, ss. 61-62, &c.

As to lists of private and pauper patients, returns by guardians and overseers of lunatics chargeable to union or parish, and visitation of pauper lunatics by parish officers, see 5 and 6 Vict., c. 57, s. 6; 16 and 17 Vict., c. 97, ss. 63-64, &c.

As to visitation of pauper lunatics not in asylum hospital, or registered house; power to examine, and send them to asylum, &c., orders for admission of pauper and private patients; removal to other asylum, discharge, or absence on trial of patients; entries of admission, discharge, removal, escape, recapture, death, &c., see 16 and 17 Vict., c. 97, ss. 66-93; 18 and 19 Vict., c. 105, s. 8; 25 and 26 Vict., c. 111.

As to order for reception of lunatic so found by inquisition, see 25 and 26 Vict., c. 111, s. 22.

As to detention of lunatic in workhouse, see 4 and 5 WILL IV., c. 76, s. 45; 25 and 26 Vict., c. 111, s. 20.

As to reception of chronic lunatics in workhouse, see 25 and 26 Vict., c. 111, s. 8; 26 and 27 Vict., c. 110, s. 2; 31 and 32 Vict., c. 122, s. 43.

As to sending of paupers when idiotic to idiot asylum, or other workhouse, see 31 and 32 Vict., c. 122, s. 13.

As to recovery of costs of maintaining lunatic out of his property, see 5 and 6 Vict., c. 57, s. 6; 7 and 8 Vict., c. 101, ss. 27-28; 16 and 17 Vict., c. 97, ss. 94-104, &c.

As to payment of expense of maintenance, removal, burial, &c., of pauper lunatic by parish where chargeable, or if settlement not ascertainable by county or borough, and provisions for determining settlement and contribution, see 16 and 17 Vict., c. 97, s. 95, &c.; 25 and 26 Vict., c. 111, s. 45.

As to costs of maintenance of lunatic sent to county asylum from borough not contributing to asylum, but situate wholly or partially in union, included in county, see 30 and 31 Vict., c. 106, s. 23; 31 and 32 Vict., c. 122, s. 13.

As to burial of pauper lunatics and providing of burial ground for asylum, see 18 and 19 Vict., c. 105, ss. 11-13; 25 and 26 Vict., c. 111, ss. 9-10.

(5). *Generally.*

As to resignation of benefice by incapacitated or lunatic incumbent, proceedings for, and consequent upon, and pension and status of retired incumbent, see 34 and 35 Vict., c. 44.

As to resignation and pension of incapacitated dean and chapter, or lunatic dean or canon, and vacation of annexed preferment, see 35 and 36 Vict., c. 8.

As to payment, &c., of out pensioners of Greenwich Hospital, and of Chelsea Hospital, and care of lunatic pensioners, see 19 and 20 Vict., c. 15; 26 and 27 Vict., c. 12.

As to orders in chancery and lunacy, and rules of court of common law when for payment of money to operate as judgment, see 1 and 2 Vict., c. 110; 15 and 19 Vict., c. 15.

As to entry by married woman, &c., under excise laws, where husband insane, &c., see 4 and 5 Vict., c. 20, s. 7.

As to pensions to lunatic seamen, and marines, and assignment thereof, see 2 and 3 Vict., c. 51.

As to transfer by Court of Chancery of property or rights vested in trustee, personal representative, or mortgagee under disability, lunatic; unknown, out of jurisdiction, refusing to act, &c., and power of court in decree for specific performance, partition, exchange, or sale, to declare persons trustees, see 13 and 14 Vict., c. 60; 15 and 16 Vict., c. 55; 17 and 18 Vict., c. 82; 31 and 32 Vict., c. 40.

**NOTE 64.—The Great Seal of the United Kingdom.**—(§ 17, p. 10.)

The great seal (*clavis regni Lat.*), the emblem of sovereignty, introduced by Edward the Confessor. By Art. 34 of the Union between England and Scotland (5 Anne 8), it is provided that there should be one Great Seal for the United Kingdom, to be used for sealing writs to summon the Parliament, and for sealing treaties with foreign states, and all public acts of state which concern the United Kingdom, and in all other matters relating to England as the Great Seal of England was then used; and that a Seal in Scotland should be kept and made use of in all things relating to private rights or grants which had usually passed the Great Seal of Scotland, and which only concern offices, grants, commissions, and private rights within Scotland. On the Union between Great Britain and Ireland, no express provision was made by any of the articles of Union as to the establishing one Great Seal for the United Kingdom; but various acts as to the summoning Parliament, &c., are required to be done under the Great Seal of Ireland; and by s. 3 of the Acts of Union, 39 and 40 Geo. III., c. 67 (*British*) and 40 Geo. III., c. 38 (*Irish*), it is enacted that the Great Seal of Ireland may, if His Majesty shall so think fit after the Union, be used in like manner as before the Union (except where it is otherwise provided by the Articles of Union), within that part of the United Kingdom called Ireland.

The principal statutes relating to the Great Seal of the United Kingdom are as follows:—

As to regulations as to documents to be passed under Great Seal, see 27 Hen. VIII., c. 11; 14 and 15 Vict., c. 82.

As to Lord Keeper of Great Seal to have same emoluments, precedence, and powers as the Chancellor, see 5 Eliz., c. 18.

As to emoluments, precedence, and powers of Commissioners of Great Seal, see 1 Will. and Mar., c. 21.

As to one Great Seal for Great Britain, see 6 Ann., c. 11.

As to Great Seal of United Kingdom, see 39 and 40 Geo. III., c. 67.

As to salary and duties of messengers of Great Seal, see 53 Geo. III., c. 89; 32 and 33 Vict., c. 91.

As to abolition of office of Clerk of Seal and Privy Signet, see 14 and 15 Vict., c. 82.

As to forging or counterfeiting the Great Seal, or any Crown Seal, or the Royal Sign Manual, or uttering or demanding property on, when forged, see 24 and 25 Vict., c. 98, s. 13-19.

**NOTE 65.—Duchy of Lancaster.**—(§ 18, p. 11)

The Duchy Court of Lancaster is a tribunal of special jurisdiction, held before the Chancellor of the Duchy or his Deputy, concerning all matters of equity relating to lands holden of the Crown in right of the Duchy of Lancaster; which is a thing very distinct from the County Palatine (that has also its separate Chancery for sealing of writs and the like), and comprises much territory which lies at a vast distance from it; as particularly a very large district surrounded by the City of Westminster. The proceedings of this Court are the same as on the equity side of the Court of Chancery, so that it seems not to be a Court of Record; and indeed it has been holden that the Court of Chancery has a concurrent jurisdiction with the Duchy Court, and may take cognizance of the same causes. 3 Bl. Com. 78. [See also notes under head "Lancaster;" "Court of Common Pleas at Lancaster;" "County Palatine."]

The principal statutes relating to the Duchy are as follows:—

As to management, and lease, and enfranchisement of lands in the Duchy, see 2 and 3 Ph. and Mar. 20; 19 Geo. III., c. 45; 27 Geo. III., c. 34; 57 Geo. III., c. 97; 18 and 19 Vict., c. 58.

As to building, gift, and bequest for church and churchyard of Crown lands, 51 Geo. III., c. 115; 10 Geo. IV., c. 50, s. 45; 5 and 6 Will. IV., c. 58.

As to payment to receiver general for prisage of wines, 2 and 3 Will. IV., c. 84, s. 40.

As to Court rooms of Duchy, 34 and 35 Vict., c. 57, s. 6.

As to jurisdiction, practice, and proceeding of Barmote Court in High Peak and customs of miners, see 14 and 15 Vict., c. 94.

As to Acts relating to Lands of the Duchy, see 27 Hen. VIII., c. 11; 7 Edw. VI., c. 3; 22 Chas. II., c. 6; 22 and 23 Chas. II., c. 24; 12 Geo. III., c. 32; 36 Geo. III., c. 97; 48 Geo. III., c. 73; 52 Geo. III., c. 161; 54 Geo. III., c. 70; 1 Geo. IV., c. 71; 1 and 2 Geo. IV., c. 52; 5 Geo. IV., c. 48; 1 and 2 Vict., c. 101; 18 and 19 Vict., c. 58; 25 and 26 Vict., c. 93, ss. 81, 82 (Thames Embankment); 34 and 35 Vict., c. 57, s. 6.

As to purchase, compulsorily or by agreement, and vesting in, and sale by, of Duchy of Lancaster lands for defence of realm, see 36 and 37 Vict., c. 68, s. 7.

As to Commissioners for making schemes, &c., for Endowed Schools, in case of Endowments belonging to Crown or Duchy of Lancaster, see 36 and 37 Vict., c. 87, s. 4.

**NOTE 66.—The Court of the Lord Warden of the Stannaries.** — (§ 18, p. 11.)

The word "stannary" is derived from the Latin, *stannum* and Cornish *stean*, tin, and means a tin mine. There are Stannary Courts in Devonshire and Cornwall for the administration of justice among the tinnerns therein. They are Courts of record of the same limited and exclusive nature as those of the Counties Palatine. They are held before a judge called the Vice-Warden, in virtue of a privilege granted to the workers in the tin mines there, to sue and be sued only in their own Courts, that they may not be drawn from their business, which is highly profitable to the public, by allowing their law suits in other Courts. Error did not lie to the Superior Courts, but by 18 and 19 Vict.,

c. 32, s. 26, from all decrees and orders of the Vice-Warden on the Equity side of this Court, and from all judgments of the Vice-Warden on the Common Law side thereof, there shall be an appeal to the Lord Warden (assisted by two or more assessors, members of the Judicial Committee of the Privy Council, or Judges of the High Court of Chancery, or Courts of Common Law at Westminster), and from the Lord Warden, a final appeal to the Judicial Committee. By the Supreme Court of Judicature Act, 1873, the first and only appeal will be to the Court of Appeal.

The principal Acts on the subject of the Stannaries Courts are as follows :—

As to restricting jurisdiction in Courts, see 16, Cha. I., c. 15.

As to the manner of taking oaths and affidavits in the Courts, see 4 and 5 Will. IV., c. 42; 32 and 33 Vict., c. 19.

As to Vice-Warden and officers, see 6 and 7 Will. IV., c. 106.

As to jurisdiction and procedure of courts and appeal from Vice-Warden, and removal of causes from Courts to Queen's Bench, see 2 and 3 Vict., c. 58; 18 and 19 Vict., c. 32; 32 and 33 Vict., c. 19.

As to cost book companies, and the winding up of the same in the Courts, see 25 and 26 Vict., c. 89 s. 68; 32 and 33 Vict., c. 19.

As to raising and regulating the Militia in the Stannaries (I.) Regular, see 42 Geo. III., c. 72; 51 Geo. III., c. 114; 15 and 16 Vict., c. 50; (II.) Local, see 52 Geo. III., c. 38, s. 166, &c.

As to the liability of the Stannaries Militia to serve in the United Kingdom, see 51 Geo. III., c. 114.

As to regulations respecting digging and washing tin, near certain harbours in Devon and Cornwall, see 23 Hen. VIII., c. 8; 27 Hen. VIII., c. 23.

As to coinage duties for tin in Devon and Cornwall, abolished for annuity to Duke of Cornwall, see 1 and 2 Vict., c. 120.

#### NOTE 67.—Jurisdiction in Lunacy.—(§ 18, p. 12.)

By section 17, sub-section 3, the original jurisdiction in lunacy remains unaltered by the Judicature Act; but by section 18, sub-section 5, the appellate jurisdiction is transferred to the Court of Appeal.

#### NOTE 68.—Save as hereinafter mentioned.—(§ 19, p. 12.)

The cases in which no appeal is to lie from the High Court of Justice to the Court of Appeal are as follows :—

1. From any judgment of the High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the judges, s. 47, p. 37.

2. From any judgment founded upon and applying any verdict, unless a motion has been made, or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, s. 48, p. 38.

3. From any order made by the High Court of Justice or any judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, except by leave of the Court or judge making such order, s. 49, p. 38.

4. From any order made by a judge in chambers (to set aside or discharge, which no motion has been made to a Divisional Court or the judge sitting in Court), unless by special leave of the judge by whom such order was made, or of the Court of Appeal, s. 50, p. 38.

#### NOTE 69.—Prior Judgment and Order.—(§ 20, p. 12.)

Appeals will still be to the House of Lords in the following cases, viz :—

1. Pending writs of error.

2. Pending appeals.

3. Appeals from decrees in Chancery enrolled before 2nd November, 1874.

4. Appeals from decisions of the Exchequer Chamber given before 2nd November, 1874.



**NOTE 70.—The Jurisdiction Transferred.**—(§ 22, p. 14).

The various Courts and Jurisdictions may be thus classified:—

I. Courts united and consolidated and forming part of the Supreme Court (sec. 3), and whose jurisdiction is transferred to the High Court of Justice by sec. 16.

- (a) The High Court of Chancery.
- (b) The Court of Queen's Bench.
- (c) The Court of Common Pleas at Westminster.
- (d) The Court of Exchequer.
- (e) The High Court of Admiralty.
- (f) The Court of Probate.
- (g) The Court for Divorce and Matrimonial Causes.
- (h) The London Court of Bankruptcy.

II. Courts, whose jurisdiction are simply transferred to the High Court, but which Courts do not form part of the Supreme Court, and consequently cease to exist (sec. 22).

- (a) The Court of Common Pleas at Lancaster.
- (b) The Court of Pleas at Durham.

III. Courts, whose jurisdictions are transferred to the High Court, but being of a temporary nature do not form part of the Supreme Court, sec. 16.

- (a) Courts created by Commissions of assize, of oyer and terminer, and of gaol delivery.

IV. Jurisdictions transferred to the Court of Appeal.

- (a) The appellate jurisdiction of the Lord Chancellor and Court of Appeal in Chancery, and of the same Court as a Court of Appeal in Bankruptcy, sec. 18.
- (b) Lancaster Court of Appeal in Chancery (viz. (I.) Chancellor of the Duchy; (II.) The Lords Justices of the Court of Chancery, see 13 and 14 Vict., c. 43; 17 and 18 Vict., c. 82), sec. 18.
- (c) Court of Lord Warden of the Stannaries, sec. 18.
- (d) Court of Exchequer Chamber, sec. 18.
- (e) The appellate jurisdictions vested in Her Majesty in Council, or the Judicial Committee of the Privy Council, from the High Court of Admiralty, or from any orders in lunacy, sec. 18.
- (f) County Court Common Law Appeals, sec. 45.
- (g) County Court Equity Appeals, sec. 16.
- (h) County Court Bankruptcy Appeals, sec. 16.

V. Jurisdiction given to the Court of Appeal, sec. 19.

- (a) Appeals from the High Court.

VI. Jurisdictions retained in the Lord Chancellor or the Lords Justices, sec. 17.

- (a) The custody of the persons and estates of idiots, lunatics, and persons of unsound mind.

VII. Jurisdictions retained in the Lord Chancellor, sec. 17.

- (a) The grant of Letters Patent.
- (b) The issue of commissions or other writings to be passed under the Great Seal.
- (c) The visitation on behalf of Her Majesty of any college or of any charitable or other foundation.

VIII. Jurisdictions retained in the Master of the Rolls, sec. 17.

- (a) The present jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

IX. Jurisdictions untransferred, and untouched by the Act by inference, *inter alia*.

- (a) The Lord Mayors Court of London.
- (b) The Court of Passage of Liverpool.
- (c) The Court of Record of the Hundred of Salford.
- (d) The various local and inferior Courts of civil jurisdiction.
- (e) The various County Courts.
- (f) The Court of the Vice-Warden of the Stannaries.
- (g) The Court of first instance of the Duchy of Lancaster.
- (h) The Chancery Court of the County Palatine of Lancaster.

X. Jurisdictions untransferred, but capable of being transferred to the Court of Appeal, sec. 21.

- (a) Appeals and petitions which now ought to be heard by the Judicial Committee.

**NOTE 71.—Law and Equity.—**(§ 24, p. 16.)

The object of this section may be stated in the concluding words as, "so that as far as possible all matters in controversy between parties may be completely and finally determined, and multiplicity of legal proceedings avoided." This object is endeavoured to be accomplished by:—

I. The fusion of law and equity, or rather the concurrent administration of law and equity, in all the Courts (sub-sections 1, 2, 5, and 6).

II. The abolition of the necessity for a cross action by a defendant (sub-section 3).

III. The determination of the subject matter of dispute as far as third parties are affected, as well as the plaintiff and defendant (sub-section 3 and 4).

IV. Strengthening the hands of the judges with wide and general powers (sub-section 7).

**NOTE 72.—No Cause shall be Restrained by Prohibition.—**

(§ 24 p. 18.)

The writ of prohibition is a remedy provided by the common law against the encroachment of jurisdiction. It issued out of the Courts of Chancery, of Queen's Bench, Common Pleas, and Exchequer, to any inferior Courts of Common Law, to the Courts of the Counties Palatine, to the County Courts, or Courts baron to the Courts Christian or Ecclesiastical, to the University Courts, to the Court of Admiralty, and perhaps to the Court for Divorce and Matrimonial Causes (see *Forster v. Forster and Berridge*, 8 L.T. 661). The various Courts having now been united and consolidated, prohibition is unnecessary as far as either the High Court or Court of Appeal is concerned, but the writ of prohibition will still lie to inferior Courts.

The principal statutes in connection with the writ of prohibition are as follows:—

As to grant of writ of *indicavit*, see 13 Edw. I. (Stat. West. 2), c. 5; 34 Edw. I. (stat. de conj. feoffatis).

As to the writ not lying in matters spiritual, see 13 Edw. I. (stat. circ. ag.)

As to the writ not to issue out of Chancery except where Queen has cognizance of suit, see 18 Edw. III., st. 3, c. 5.

As to the writ not to be allowed after consultation granted, see 50 Edw. III., c. 4.

As to proceedings on application for writ, see 1 Will. IV., c. 21; 9 and 10 Vict., c. 113.

As to writ to County Court Judge, see 13 and 14 Vict., c. 61, s. 22; 19 and 20 Vict., c. 108.

As to the restraint of Ecclesiastical Court by writ, see 13 Edw. I. (stat. circ. ag.); 18 Edw. I. (stat. de consult.); 9 Edw. II., stat. 1 (Art. Cleri.), cc. 1, 2, 5; 45 Ed. III., c. 3; 50 Edw. III., c. 4; 13 Chas. II., stat. I, c. 12.

**NOTE 73.—No Cause shall be restrained by Injunction.—**(§ 24, p. 18.)

As prohibition interfered in a dispute as to jurisdiction, so injunction lied from the Court of Chancery to the Common Law Courts, wherever there appeared to be an insufficient recognition of the principles of equity, or anyone was attempting to make a Court of Law an instrument of injustice. As equitable estates, rights, and titles, will for the future be equally recognised in all divisions of the Supreme Court, restraint of any proceedings in the High Court or Court of Appeal by injunction is useless and unnecessary; and since the inferior Courts up to their jurisdiction have similar powers to the High Court for the concurrent administration of law and equity, (see ss. 89-90), the proceedings for injunction to inferior Courts will be seldom resorted to.

**NOTE 74.—Administration of Assets of Insolvent Estates.—**

(§ 25, p. 19.)

In the administration of the legal assets of a deceased insolvent, the Court of Equity has hitherto given priority to different classes of creditors by which precedence has been given to judgment and specialty creditors over simple con-

tract creditors. In the distribution of Equitable assets, a different rule has prevailed. In bankruptcy the assets are distributed *pari passu* amongst all the creditors, and a creditor who holds security on the property of the bankrupt must either give it up or give credit for its value, or be excluded from all share in any dividend: (see Bankruptcy Act, 1869; 32 and 33 Vict., c. 71, s. 40). There seems no reason why the estate of an insolvent should be administered in a different way when he is dead from what it is when he is living; and it was well, therefore, to assimilate the one with the other. It is difficult to understand, however, why different divisional courts should be selected, and why the administration of the estate of the insolvent when he is dead should be assigned to the Chancery division, and when he is alive to the Exchequer division: (Pat. Stat., 1873, p. 138).

This enactment displaces in favour of the rule in bankruptcy, the rule in Equity as established in *Mason v. Rigg*, 2 Mylne and Craig, 443, allowing a creditor mortgagee to prove for his debt, realise his security, and receive a dividend rateably with other creditors of the deceased on his whole debt. It appears to have escaped attention that the equitable rule prevails also in cases arising under the Winding-up Acts (see *Kellock's case*, Law Rep. 3, Ch. 769), and in default of further statutory enactment it must, by sub-section 11, still prevail in these cases: (Hayne's Judicature Act annotated, p. 14).

**NOTE 75.—Express Trust.**—(§ 25, p. 20.)

A trust is defined to be a confidence reposed in one person, who is termed the *Trustee* for the benefit of another who is termed the *Cestui que trust*, and it is a confidence respecting property which is thus held by the former for the benefit of the latter. Out of this confidence arise two estates in the property which is the subject of it. (I.) a legal estate in trustees, which consists essentially in obligation; and (II.) an Equitable Estate in the *cestui que trust* which consists in right and beneficial enjoyment. So that a trust embraces the two ideas of an obligation on the part of one person, and a corresponding right on the part of the other, both growing out of the radical idea of faith and confidence.

Trusts may be thus classed:—

I. Express.

- (a) Trusts executed, perfect, complete, or constituted.
- (b) Trusts executory, imperfect, incomplete, or directory.

II. Arising by operation of law.

- (a) Constructive.
- (b) Resulting.
- (c) Implied.

Express trusts are generally,

I. Trusts created in marriage settlements.

II. Trusts created in conveyances to purchasers.

III. Trusts created in conveyances by way of mortgage or otherwise, for the payment of debts.

IV. Trusts created in assignment of choses in action.

Mr Hayne, in his annotated edition of the Judicature Act (p. 15), makes the following remarks on this provision:—

"So far as it goes, it states what is undoubted by the rule in Equity, but it suggests a less extensive rule than that which now obtains. For instance, a guardian in possession of an infant's real estate (though not holding on an express trust), is treated as a trustee, and the Statute of Limitations is no answer to a bill for an account: *Matthew v. Brise*, 14 Beavan 341; *Thomas v. Thomas*, 2 Kay and Johns 79. So again the Statute of Limitations has been held to be no defence to a suit against actual participators in a breach of trust, though not trustees: *Brigman v. Gill*, 24 Beavan 302. So again the personal representative of a trustee who has committed a breach of trust cannot successfully set up the statute as a defence to a claim against the Trustee's estate: *Brittbank v. Goodwin*, Law Rep. 5 Eq., 545."

**NOTE 76.—Statutes of Limitations**—(§ 25, p. 20.)

The principal statutes of limitations are as follows:—

As to limitation of time for suits for recovery of realty, see 32 Hen. VIII., c. 2.

As to limitation of time for actions and suits, see 21 Ja. I., c. 16; 19 and 20 Vict., c. 97.

As to limitation of time for prosecution for treason, see 7 and 8 Will. III., c. 3.

- As to limitation of time for writ of error, see 10 Will. III., c. 20.  
 As to limitation of time for suits for seamen's wages, see 4 and 5 Ann., c. 3, ss. 17-19.  
 As to limitation of time for removal by certiorari of proceedings before justices, see 13 Geo. II., c. 18.  
 As to limitation of time for suits for land by the Crown, see 9 Geo. III., c. 16; 24 and 25 Vict., c. 62.  
 As to limitation of time for various suits in ecclesiastical Courts, see 27 Geo. III., c. 44; 3 and 4 Vict., c. 86, s. 21.  
 As to limitation of time for information in quo warranto, see 32 Geo. III., c. 58.  
 As to limitation of time for action for debts of heir apparent of Crown, see 35 Geo. III., c. 125.  
 As to what acknowledgment will take contract out of statutes of limitation of time, see 9 Geo. IV., c. 14; 3 and 4 Will. IV., c. 27; 3 and 4 Will. IV., c. 42; 19 and 20 Vict., c. 97.  
 As to statutes of limitation of time applied to set off, see 9 Geo. IV., c. 14.  
 As to limitation of time for suits respecting land, rent, advowson, tithes, mortgages of land, legacy, arrears of dower and interest, see 3 and 4 Will. IV., c. 27; 7 Will. IV., and 1 Vict., c. 28; 19 and 20 Vict., c. 97.  
 As to limitation of time for actions on specialty, debts, or on awards, for fine, for copyholds, escape, money levied on, fl. fa., &c., see 3 and 4 Will. IV., c. 42; 19 and 20 Vict., c. 97.  
 As to limitation of time for actions on penal statutes, see 3 and 4 Will. IV., c. 42; 11 and 12 Vict., c. 43, s. 36.  
 As to limitation of time for quo warranto against mayor, &c., in borough, see 7 Will. IV., and 1 Vict., c. 78; 6 and 7 Vict., c. 89.  
 As to limitation of time for impeachment of sale by bankrupt, see 2 and 3 Vict., c. 11, s. 13.  
 As to limitation of time for suits against clergy for ecclesiastical offences, see 3 and 4 Vict., c. 86.  
 As to limitation of time for actions for anything done under Local Act, see 5 and 6 Vict., c. 97.  
 As to limitation of time for complaint in summary proceedings, see 11 and 12 Vict., c. 43.  
 As to limitation of time for actions against justices, see 11 and 12 Vict., c. 44.  
 As to limitation of time for actions or suits of account, see 19 and 20 Vict., c. 97.  
 As to limitation of time for error on revenue side of Exchequer, see 22 and 23 Vict., c. 21.  
 As to limitation of time for suits to recover personal estate of intestate, see 23 and 24 Vict., c. 38, s. 13.  
 As to limitation of time for suits respecting realty by Duke of Cornwall, see 23 and 24 Vict., c. 53; 24 and 25 Vict., c. 62.  
 As to length of notice of action where notice required, see 5 and 6 Vict., c. 97.  
 As to salvage to recaptors of British ships and goods from enemy, and limitation of time for action, see 27 and 28 Vict., c. 25.

**(NOTE 77.—Equitable Waste.—(§ 25, p. 20.)**

Waste from the Latin *vastum* is a spoil or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that has the remainder or reversion in fee simple or fee tail. Co. Litt. 53.

Waste is either :—

- I. Voluntary, which is an act of commission, as pulling down a house, or
- II. Permissive, which is a matter of omission only as by suffering it to fall for want of necessary reparation.

Whatever does a lasting damage to the freehold or inheritance is waste, 4 Co. 64.

Again waste is either :—

- I. Legal.
  - II. Equitable, which comprehends acts not deemed waste at common law.
- To prevent parties, subject to waste, from suffering by the ordinary common law liability, it is not unusual to insert a clause by which they are not to be

subject to impeachment for waste. The intention of this clause is to enable the tenant to do many things, such as cutting down trees or opening new mines, which would, by the construction of the common law, amount to waste; but it does not extend to allow destructive or malicious waste, such as cutting down timber which serves for the shelter or ornament of the estate. *Packington's case*, 3 Atk. 215. The privilege thus given by the words, "without impeachment of waste," is annexed to the privity of estate; so that if the person to whom that privilege is given changes his estate, he loses the privilege. *Co. Litt.* 220, n.l.; 3 *Wood*. 399. A tenant for life, "without impeachment of waste," has as full power to cut down trees and open new mines for his own use, as if he had an estate of inheritance; and is in the same manner entitled to the timber, if severed by others (*Pyne v. Dor*, 1 T.R. 54); but the words, "without impeachment of waste," will not permit a tenant for life to unlead a house and pull down the tiles. *Vane v. Lord Barnard*, 1 T.R., 56n; 2 *Vern.* 738. See also, as to this, *Gent v. Harrison*, *Johns.* 517; 29 L.J. Ch. 68. *Morris v. Morris*, 3 De Gex. and J. 323. *Field v. Brown*, 27 *Beav.* 90. *Micklethwait v. Micklethwait*, 1 De Gex. and J. 504; 26 L.J. Ch. 721. *Vincent v. Spicer*, 22 *Beav.* 380; 25 L.J. Ch. 589.

**NOTE 78.—Merger.—**(§ 25 p. 20)

Merger is described to be whenever a greater estate and less coincide, and meet in one and the same person, without any intermediate estate; whereby the less is immediately annihilated, or is said to be merged, that is sunk or drowned in the greater. Thus, if there be tenant for years, and the reversion in fee simple, descends to or is purchased by him, the term of years is merged in the inheritance, and shall never exist any more. *Shep. Touch.* 341, ed. Hillyard; 2 *Bl. Com.* 177. The object of merger is to accelerate the possession, or at least the estate, in which the merger takes place. 3 *Prest. Conv.* 6. It is an act of law, and seems entitled to the denomination of the extinguishment by act of law of one estate in another by the union of these two estates. To consolidate two estates and confound them into one estate, are its effects. The estate thus blended will give the precise time of enjoyment originally limited by the more remote of the two estates, and no more; for the estate in which the merger takes place is not enlarged by the occasion of the preceding estate. (*Id.*) And see *Smith v. Lord Camelford*, 2 *Ves. Jun.*, 714; *Webb v. Russell*, 3 T.R., 394; *Brook, Exting.*, pl. 50; 1 *Saund.* 387; *Salk.* 326; 2 *Co. Litt.*, p. 557.

In order to effect a merger the following circumstances hitherto must have concurred:—

(I.) There must of necessity be two estates at least in the same property, or in the same part of the same property, which must vest in the same person.

Merger however, will operate between three or more estates, as well as between two.

(II.) The several estates must be immediately expectant upon each other; the more remote estate must be without any intervening vested estate or contingent remainder created in the same instant of time and by the same means, which originated the other estates; and the determination or acquisition of an intermediate estate may be the cause of merger, as between estates kept distinct by means of such intermediate estate.

(III.) The estate in reversion or remainder must be larger than the preceding estate, for there cannot be a merger as between equal estates of freehold.

For the future another element will be necessary for merger to operate, viz:—

(IV.) The beneficial interest must be deemed to be merged in equity.

Merger was not favoured in equity, except to promote the intention (*Phillips v. Phillips* 1, P. Wms. 41); and, therefore, though there might, as to equitable estates, be an union in equity as well as at law, yet equity would not permit an acceleration of charges, incumbrances, &c., as a consequence of the union against the justice of the case or contrary to the intention.

**NOTE 79.—Chose in Action.—**(§ 25, p. 21.)

A chose in action, otherwise called a *chose in suspensio* is a right—in *potentia* rather than in *esse*—to receive or recover a debt, or money or damages for breach of contract, or for a tort connected with contract, but which cannot be

enforced without action, and therefore, termed a chose, or thing in action, see *Com. Dig. Biens.* : 2 *Black Com.*, 396 ; 1 *Chit. Gen. (Pr.)* 99.

The necessity for the rule contained in this section of the Act arose from the fact that the Courts of Law and Equity, now to be united, administered a different law on the subject of choses in action. At law, with the exception of negotiable instruments, bills of exchange, &c., a chose in action could not be assigned. When, therefore, a debt or bond was assigned over, it was still necessary to be sued in the original creditors name, and the person to whom it was transferred assumed rather the character of an attorney than an assignee, unless the debtor assented to the transfer, but Courts of Equity totally disregarded this nicety. They gave effect to assignments of trusts, and possibilities of trusts, and contingent interests, whether they were in real or personal estates, as well as to assignments of choses in action, such equitable transfer being in the nature of an agreement, of which the Court of Chancery directed the performance. [*Co. Litt.* 214a ; 2 *Bl. Com.* 442 ; 2 *Sanders on uses* 40 ; 2 *Story's, Eq. Juris.* 278 ; *Watkins Com.* 36.] For the future the two essentials for an assignment absolutely of a chose in action are (I.) An assignment by writing under the hand of the assignor ; (II.) Express notice in writing to the person from whom the assignor would be entitled to claim the chose in action.

**NOTE 80.—The Acts for the Relief of Trustees.**—(§ 25, p. 22.)

These Acts are 10 and 11 Vict., c. 96, and 12 and 13 Vict., c. 74, and will be found at length among the "Statutes Referred to," pp. 130-131. Section 3 of 10 and 11 Vict., c. 96, is repealed by 35 and 36 Vict., c. 44, s. 26.

The jurisdiction of the Court of Chancery, to a limited extent, has been extended to County Courts, by 23 and 29 Vict., c. 99, and by 30 and 31 Vict., c. 142.

By the 5th clause of section 1 of the 28 and 29 Vict., c. 99, jurisdiction is given to the County Courts in all proceedings under the Trustees Relief Acts, or under the Trustees Acts, or under any of such Acts, in which the Trust Fund to which the proceeding relates shall not exceed in amount or value the sum of £500.

The sections of "The County Courts Act, 1867" (30 and 31 Vict., c. 142), referring to the subject, are as follows :—

Trustees  
may pay  
trust  
moneys, or  
transfer  
stock and  
securities  
into the  
Court.

24. Any moneys, annuities, stocks, or securities vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of an Act passed in the session of Parliament, holden in the tenth and eleventh years of the reign of Her present Majesty, chapter ninety-six, "for better securing Trust Funds, and for the Relief of Trustees," where the same does not exceed in amount or value the sum of five hundred pounds, upon the filing by such trustees or other persons, or the major part of them, to or with the registrar of the county court, within the district of which such persons or any of them shall reside, an affidavit shortly describing the instrument creating the trust according to the best of their knowledge, may, in the case of money, be paid into a post-office savings' bank established in the town, in which the County Court is held in the name of the registrar of such Court, in trust to attend the orders of the Court, and upon such persons filing with the registrar, the receipt, or other document given to them by the officer of the said bank, the registrar shall record the same, and give to them an acknowledgment in such form as may be directed by any rule of practice, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and in the case of stocks or securities may be transferred or deposited into or in the names of the treasurer and registrars of such Court, in trust to attend the orders of the Court, and the certificate of the proper officer of the transfer, or deposit of such stocks or securities, shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited, provided that where there is not a treasurer a person shall be nominated by rule of practice, to whom the transfer or deposit in conjunction with the registrar may be made.

Extension of 25. For the purposes of the last section all the powers and powers given authorities given to the Court of Chancery by the Act passed in by 12 and 13 the session of Parliament, holden in the twelfth and thirteenth Vict., c. 74, years of the reign of her present Majesty, chapter seventy-four, to Court of "for the further Relief of Trustees," shall be possessed and Chancery, to-exercised by the County Courts, and any order made by virtue of County such powers and authorities shall fully protect and indemnify all courts. persons acting under or in pursuance of such order.

**NOTE 81.—Stipulations in Contracts — (§ 25, p. 22 )**

Although sub-section 11 of this section would have decided any conflict between the Common Law and Equity Courts on this subject, the view taken by some Common Law Judges antagonistic to the decisions of the Court of Chancery, may have occasioned the prominence given to this particular case of conflict. For instance, in the case of *Preston v. Dania* and another (27 L.T.N.S., 612), an action on a bond conditioned for the payment of money by instalments, a plea of payment into Court of money sufficient to satisfy the claim of the plaintiff in respect of the unpaid instalments, for default in payment of which the action was brought, was held by the Court of Exchequer to be bad. Mr. Baron Bramwell in delivering judgment making the following remarks :—

Originally, no doubt, at common law the penalty named in the bond was the debt to be recovered. The courts of law, considering that it was most probable that the obligor, upon entering into the bond, knew what he was about, and meant and intended what he said or put his hand to ; said that if a man bound himself to pay a penalty in a certain event, he should, if that event occurred, pay it. The Court of Chancery, however, seems to have thought that it knew the obligor's meaning better than he knew it himself, and thereupon took upon itself, most unfortunately in my opinion, to relieve the obligor from the payment of the penalty upon the payment of the sum named in the defeasance and the costs. This practice having been once begun, soon, of course, became general. It was taken for granted that in such cases equity of course was right, and that the common law was wrong ; and so what was called the equitable construction had to be maintained. The Legislature, then, in order to relieve defendants from having to apply to a Court of Equity for redress in such actions, and also to take away the necessity of two suits being instituted, the one at Common Law and the other in Equity in the case of every bond, passed the Act of the 8 and 9 W. and M., c. 11.

**NOTE 82.—Mandamus.— (§ 25, p. 22 )**

The principal statutes in connection with the writ of mandamus are as follows :—

As to amendment of writs of mandamus, quo warranto, and error by extension of statutes of jeofails, see 9 Ann, c. 25, s. 7 ; 5 Geo. I., c. 13.

As to writ of mandamus for election of a mayor, see 11 Geo. I., c. 4.

As to proceedings as to returns to writ of mandamus, &c., and protection of officers to whom directed, see 9 Ann, c. 25 ; 1 Will. IV., c. 21.

As to demurrer to return, error on, and protection of persons obeying writ of mandamus, see 6 and 7 Vict., c. 67.

As to practice on writ of mandamus respecting municipal corporations, see 6 and 7 Vict., c. 89.

As to claim of, in action and issue of writ of mandamus, see 17 and 18 Vict., c. 125, ss. 68-75 ; 23 and 24 Vict., c. 126.

As to proceedings by motion for prerogative, see 17 and 18 Vict., c. 125, s. 76.

As to writ of mandamus to compel admission to borough as freemen, &c., see 12 Geo. III., c. 21, s. 1.

As to writ of mandamus to judge of County Court, see 19 and 20 Vict., c. 108 ; 21 and 22 Vict., c. 74.

As to protection of Justice of the Peace in actions against them for acts done in the execution of their office, and writ of mandamus to, see 11 and 12 Vict., c. 44.

**NOTE 83.—Injunction.—**(§ 25, p. 22.)

The principal statutes in connection with the grant of an injunction are as follows:—

As to grant of injunction in action at Common Law, see 17 and 18 Vict., c. 125, ss. 79-82; 23 and 24 Vict., c. 126, s. 22.

As to the manner of enforcing an injunction against a corporation, see 23 and 24 Vict., c. 126, s. 33.

**NOTE 84.—Such Injunction may be granted if the Court shall think fit.—**(§ 25, p. 22.)

Mr. Hayne (Judicature Annotated, p. xvi.) draws attention to the cases of *Talbot v. Hope-Scott* 4 Kay, and Johns, 96; *Loundes v. Bettle*, 10 Jur. N.S. 226; S.C. 33 L.J.N.S. Chanc. 451; *Stanford v. Hurlstone*, L.R. 9, Ch. 116.

**NOTE 85.—Damages by Collisions at Sea.—**(§ 25, p. 22.)

In the case of a collision between two ships, where both ships are to blame, the rule in the Admiralty Court is to ascertain the sum total of the joint damage, and then to divide it between the two ships, so that each contributes half the cost of repairing the damage the other has received. The ship which had received the least damage would have, therefore, to pay something to the one which had received the most. For example, if one ship was injured to the extent of £1,000 and the other to the extent of £9,000, the former would have to pay to the latter £4,000, being the moiety of £10,000, after deducting the £1,000, the extent of the damage which the vessel least injured had received. The rule at common law is very different, for if an action be brought for the damage occasioned in a collision either between two carriages or two vessels, through the negligence of the defendant, if the plaintiff be found to have been guilty of contributory negligence, he falls in his action; so that if each party has been to blame each bears the damage inflicted by the collision, and the plaintiff in addition has to pay the whole costs of the action. As the Admiralty and Common Law Courts are to become divisional courts of one and the same high court it was proper to have one rule in each instead of such conflicting rules, and the Lord Chancellor proposed to substitute the rule at common law for that in the Admiralty Court, but the Legislature rejected this, and required the rule in the Admiralty Court to prevail as being not only the more equitable one, but as being the universal one amongst maritime nations, with the single exception of Prussia. The causes arising out of collisions at sea, over which the Admiralty Court has hitherto had exclusive jurisdiction, are to be assigned to the Admiralty division; and, therefore, in those causes the enactment in sub-section 9, declaring that the Admiralty rule is to prevail, will produce no change; but there are many cases in which an action at common law would lie for the injury resulting from any such collision, notwithstanding it was one over which the Court of Admiralty had jurisdiction, as shown by the case of *Nelson v. Couch* (15 C.B., N.S. 91; 33 L.J., N.S. 46, C.P.). In the determination of such cases for the future, the above enactment will make a considerable change.—Pat. Stat. 1873, p. 141.

**NOTE 86.—Questions relating to the Custody and Education of Infants.—**(§ 25, p. 22.)

The cases of *Re Mary Ellen Andrews*, 28 L.T.N.S., 355; *Andrews v. Salt*, 23 L.T.N.S., 686; illustrates the conflict of the Common Law and Equity Courts on this subject. In that case an agreement was made between a husband and wife before their marriage that the sons of the marriage should be brought up as Catholics and the daughters as Protestants. In 1862 a daughter was born, and was baptized by a Protestant clergyman in the absence of the father, who, however, made no objection. In 1863 the father died, having by his will directed his children to be brought up as Catholics, and having appointed his



brother, who was a Catholic, their guardian. The daughter was maintained by the wife's relatives and brought up by them as a Protestant from the time of the father's death down to 1871, when the guardian for the first time informed them of the existence of the will, and demanded that the daughter should be given up to him to be educated as a Catholic. On their refusal to do so, the guardian obtained a writ of habeas corpus against them in the Court of Queen's Bench. The Lords Justices of Appeal, however, held that the legal right of the father to have his children educated in his own religion had been waived by him in his lifetime, and subsequently by the guardian, and that as they had thus rendered it for the benefit of the daughter to be left in the custody of the mother's relatives, an injunction must be granted to restrain the guardian from interfering with her custody or education.

The principal statutes on this subject are as follows :—

- As to suit of infant by next friend, see 13 Edw. I. (*Stat. West. 2*), c. 15.
- As to capacity of child in ventre sa mere to take in remainder, see 10 Will. III., c. 22.
- As to no action upon contract of infant unless ratification in writing, see 9 Geo. IV., c. 14.
- As to maintenance of infant out of dividends by order of Court of Chancery, see 11 Geo. IV., and 1 Will. IV., c. 65, s. 32.
- As to order of Court of Chancery for access to, or custody of infant by mother, and agreement in separation deed with respect thereto, see 36 and 37 Vict., c. 12.
- As to voluntary custody of infant convicted of felony, see 3 and 4 Vict., c. 90.
- As to power of infant in certain cases to make binding, marriage settlement, see 18 and 19 Vict., c. 43; 23 and 24 Vict., c. 83.
- As to national status of infant, see 33 and 34 Vict., c. 14, s. 10.
- As to administrator during minority of infant executor, see 38 Geo. III., c. 87.
- As to exposing or abandoning child, see 24 and 25 Vict., c. 100, s. 27.
- As to taking away child under 14 from parent, see 24 and 25 Vict., c. 100, s. 56.
- As to neglect of child by parent, see 31 and 32 Vict., c. 122.
- As to child under one year of age, registry, and regulation of houses for reception of, and inquest on death of child, see 35 and 36 Vict., c. 38.
- As to admission to copyhold, of infants and married women, and payment of their fines and abolition of forfeiture of copyhold by them, see 11 Geo. IV., and 1 Will. IV., c. 65; 16 and 17 Vict., c. 70.
- As to guardian for purpose of consenting to marriage of infant, see 4 Geo. IV., c. 76, s. 16.
- As to power of attorney for receipt of dividends on stock of joint tenant where one is lunatic or infant, see 33 and 34 Vict., c. 71, s. 19.
- As to renewal of lease where infant or married woman is lessee or lessor, or where lessor is out of jurisdiction, see 11 Geo. IV., and 1 Will. IV., c. 65.
- As to lease by Court of Chancery of estate of infant, see 11 Geo. IV., and 1 Will. IV., c. 65.
- As to power of infant to sue for wages in County Court, see 9 and 10 Vict., c. 95, s. 64.
- As to trustee's investment of funds, application of infants' property to his maintenance, and accumulation of surplus, see 23 and 24 Vict., c. 145.
- As to education of children of persons in receipt of out-door relief, see 36 and 37 Vict., c. 88, ss. 3, 4.
- As to children under age of eight, not to be employed in agriculture except by parent, see 36 and 37 Vict., c. 67, s. 5.
- As to certificates of attendance at school of children between the ages of eight and twelve employed in agriculture, see 36 and 37 Vict., c. 67.

#### NOTE 87.—Terms.—(§ 26, p. 23).

The date and length of legal terms were settled by 11 Geo. IV., and 1 Will. IV., c. 70; 1 Will. IV. c. 3.

**NOTE 88.—Circuits.—**(§ 29, p. 24.)

Circuits, eight certain divisions of England and Wales, appointed hitherto for the Common Law Judges to go twice a year in the respective vacations after Hilary and Trinity terms, to administer justice in the several counties. Two judges go on each of the eight circuits, with the exception of those of North and South Wales, to each of which one judge is found sufficient. Where there are two judges they preside simultaneously in the civil and criminal courts; but the judge who takes the civil side in one county, takes the criminal side in the next county, and so alternately throughout the circuit. In presiding in the criminal court, the judge sits robed in scarlet and ermine, and wears a full bottomed wig; but in the civil court he wears a black silk gown and a short wig. The following are the circuits:—

(1.) *Northern Circuit*: Durham, Newcastle, Carlisle, Appleby, Lancaster, Liverpool, and Manchester.

(2.) *Home Circuit*: Hertford, Chelmsford, Maidstone, Lewes, Kingston, in *Spring*; Guildford or Croydon in *Summer*.

(3.) *Western Circuit*: Winchester, Salisbury, or Devizes, Dorchester, Exeter, Bodmin, Taunton, in *Spring*; Wells and Bridgewater, alternately in *Summer* and Bristol in *Summer* only.

(4.) *Oxford Circuit*: Reading in *Spring*; Abingdon in *Summer*; Oxford, Worcester, Stafford, Shrewsbury, Hereford, Monmouth, Gloucester.

(5.) *Midland Circuit*: York, Leeds, Oakham, Lincoln, Nottingham, Derby, Coventry, Warwick.

(6.) *Norfolk Circuit*: Leicester, Northampton, Oakham, Aylesbury or Buckingham, Bedford, Huntingdon, Cambridge, Bury St. Edmunds in *Spring*; Ipswich in *Summer*, Norwich.

(7.) *North Wales Circuit*: Newtown, Dolgelly in *Summer*; Welchpool Bala in *Spring*, Carnarvon, Beaumaris, Ruthin, Mold, Chester.

(8.) *South Wales Circuit*: Swansea in *Spring*, Cardiff in *Summer*, Carmarthen, Haverford West, Cardigan, Brecon, Presteign, Chester.

By the second sub-section of section 68, Rules of Court may be made before the commencement of the Act, for the regulation of circuits including the times and places at which they are to be holden, and the business to be transacted thereat.

Although in this section the Judges of the High Court only are mentioned by sec. 37, future ordinary judges of the Court of Appeal, and future Judges of the Chancery Division may be included in any commission.

**NOTE 89.—The County Courts.—**(§ 45, p. 86.)

The principal statutes referring to the County Courts are as follows:—

(1.) *Constitution*.

As to establishment of, and districts of counties for, and holding of small debts Court, as County Court, see 9 and 10 Vict., c. 95; 12 and 13 Vict., c. 101; 21 and 22 Vict., c. 74; 31 and 32 Vict., c. 71.

As to County Court districts in Admiralty cases, see 31 and 32 Vict., c. 71.

As to County Court districts in Bankruptcy cases, see 32 and 33 Vict., c. 71.

As to City of London Court, see 28 and 29 Vict., c. 99, s. 4; 30 and 31 Vict., c. 122, ss. 32-35.

As to appointment, qualification, payment, pensions, &c., of judges and deputy judges of County Court, see 9 and 10 Vict., c. 95; 13 and 14 Vict., c. 61; 15 and 16 Vict., c. 54; 19 and 20 Vict., c. 108; 20 and 21 Vict., c. 36; 30 and 31 Vict., c. 142.

As to appointment of assessors in Admiralty cases, see 31 and 32 Vict., c. 71; 32 and 33 Vict., c. 51.

As to bailiffs and officers of County Court and suits, by or against them, see 9 and 10 Vict., c. 95; 13 and 14 Vict., c. 61; 15 and 16 Vict., c. 54; 19 and 20 Vict., c. 108; 22 Vict., c. 8; 24 and 25 Vict., c. 134; 29 and 30 Vict., c. 14; 30 and 31 Vict., c. 142; 31 and 32 Vict., c. 71.

As to salaries of treasurer and officers of County Court, and expenses of, see 9 and 10 Vict., c. 95; 17 and 18 Vict., c. 84.

As to protection of, and remedy against bailiffs and officers of County Court,

see 9 and 10 Vict., c. 95; 13 and 14 Vict., c. 61; 15 and 16 Vict., c. 54; 19 and 20 Vict., c. 108.

As to protection of high bailiff by interpleader, see 30 and 31 Vict., c. 142.

As to accounts of registrars, &c., of County Court, and audit, see 9 and 10 Vict., c. 95; 12 and 13 Vict., c. 101; 15 and 16 Vict., c. 54; 29 and 30 Vict., c. 14.

As to providing and ownership of court houses and offices, see 19 and 20 Vict., c. 108, s. 85; 33 and 34 Vict., c. 15.

As to use of town hall, court, and public buildings for County Court, see 13 and 14 Vict., c. 61.

As to prison used for County Court, see 9 and 10 Vict., c. 95, s. 49; 12 and 13 Vict., c. 101; 19 and 20 Vict., c. 108, s. 74.

As to practitioners before County Court and their fees, &c., see 9 and 10 Vict., c. 95, s. 91; 15 and 16 Vict., c. 54; 19 and 20 Vict., c. 108; 28 and 29 Vict., c. 99; 30 and 31 Vict., c. 142.

(2.) *Jurisdiction.*

As to County Courts general, see 9 and 10 Vict., c. 95; 13 and 14 Vict., c. 61; 19 and 20 Vict., c. 108; 30 and 31 Vict., c. 142.

As to County Court in case of recovery of small tenements and ejectment, see 9 and 10 Vict., c. 95, ss. 124-125; 19 and 20 Vict., c. 108, ss. 50-56; 30 and 31 Vict., c. 142, ss. 11-13.

As to County Court in case of acknowledgments of married women, see 19 and 20 Vict., c. 108.

As to County Court in case of matters testamentary, see 20 and 21 Vict., c. 77, ss. 55-60; 21 and 22 Vict., c. 95, s. 10, &c.

As to County Court in case of piracy of copyright in designs, see 21 and 22 Vict., c. 70.

As to County Court as to equitable matters and legacies, see 28 and 29 Vict., c. 99; 30 and 31 Vict., c. 142.

As to County Court under Trustee Relief Acts, see 30 and 31 Vict., c. 142.

As to County Court in suits for partition, see 31 and 32 Vict., c. 40.

As to County Court in Admiralty cases, see 31 and 32 Vict., c. 71; 32 and 33 Vict., c. 51.

As to County Court in bankruptcy, see 32 and 33 Vict., c. 71.

As to winding up of insolvency business in London and County Courts, see 32 and 33 Vict., c. 83.

As to removal of proceedings in County Court to Superior Court by *certiorari*, see 9 and 10 Vict., c. 95, s. 90; 13 and 14 Vict., c. 61; 19 and 20 Vict., c. 108, s. 38.

As to removal of proceedings in County Court to Admiralty or Cinque Port Court, see 31 and 32 Vict., c. 71.

As to exclusion of jurisdiction of Inferior Courts, not of record, see 15 and 16 Vict., c. 54, s. 7; 30 and 31 Vict., c. 142.

As to mandamus to Judge of County Court, see 19 and 20 Vict., c. 108; 21 and 22 Vict., c. 74.

As to trial in County Court of action brought in Superior Court, see 19 and 20 Vict., c. 108; 30 and 31 Vict., c. 142.

As to County Court, no action in, on any judgment of Superior Court, see 19 and 20 Vict., c. 108, s. 27.

As to removal to County Court of winding up of companies, see 30 and 31 Vict., c. 131.

As to removal to County Court of suits in Chancery, see 30 and 31 Vict., c. 142.

As to decision by Court of Chancery or County Court, of dispute between husband and wife as to certain separate property of wife, see 33 and 34 Vict., c. 93, s. 9.

As to payment of legacy or residuary personalty by personal representative into County Court, see 28 and 29 Vict., c. 99, s. 5.

As to acknowledgment of deeds by married woman in County Court, see 19 and 20 Vict., c. 108, s. 73.

As to powers of Metropolitan Board of Works, summary proceedings, penalties, &c., in respect of buildings in metropolis; jurisdiction of County Court and justices, and appeal, see 18 and 19 Vict., c. 122; 32 and 33 Vict., c. 82.

(3.) *Procedure.*

As to effect of and proceedings in County Court on death of Judge or officer, see 19 and 20 Vict., c. 108.

- As to appeal from County Court, see 13 and 14 Vict., c. 61; 15 and 16 Vict., c. 54; 19 and 20 Vict., c. 108, s. 68; 30 and 31 Vict., c. 142.
- As to appeal from County Court in testamentary matters, see 20 and 21 Vict., c. 77, s. 58.
- As to appeal from County Court in equitable matters, see 28 and 29 Vict., c. 99.
- As to appeal from County Court in Admiralty cases, see 31 and 32 Vict., c. 71.
- As to appeal from County Court in bankruptcy, see 32 and 33 Vict., c. 71.
- As to examination and imprisonment of judgment debtors for non-payment, see 9 and 10 Vict., c. 95, ss. 102, &c.; 12 and 13 Vict., c. 101; 19 and 20 Vict., c. 108, s. 48; 32 and 33 Vict., c. 62.
- As to process of, and proceedings and practice in County Court, see 9 and 10 Vict., c. 95; 13 and 14 Vict., c. 61; 19 and 20 Vict., c. 108; 30 and 31 Vict., c. 142.
- As to process of, in testamentary matters, see 20 and 21 Vict., c. 77, ss. 55-61.
- As to process of, in equitable matters, see 28 and 29 Vict., c. 99.
- As to process of, in Admiralty matters, see 31 and 32 Vict., c. 71.
- As to no abatement on bankruptcy of plaintiff if assignees elect to continue, see 19 and 20 Vict., c. 108.
- As to reference by Judge of County Court to arbitration, see 9 and 10 Vict., c. 95.
- As to jury for County Court, see 9 and 10 Vict., c. 95.
- As to nautical assessors in Admiralty cases, see 31 and 32 Vict., c. 71.
- As to attendance of witnesses before County Court, see 9 and 10 Vict., c. 95, s. 85, &c.; 19 and 20 Vict., c. 108, s. 31.
- As to taking of evidence in County Court in Admiralty cases, see 31 and 32 Vict., c. 71.
- As to committal for contempt of County Court, see 9 and 10 Vict., c. 95, s. 113; 12 and 13 Vict., c. 101.
- As to general rules of County Court, see 9 and 10 Vict., c. 95, s. 78; 12 and 13 Vict., c. 101; 19 and 20 Vict., c. 108; 20 and 21 Vict., c. 77, s. 60; 28 and 29 Vict., c. 99.
- As to general rules of County Court in winding up cases, see 30 and 31 Vict., c. 131.
- As to general rules of County Court in Admiralty cases, see 31 and 32 Vict., c. 71.
- As to general rules of County Court in Admiralty cases by assessor of Court of Passage in Liverpool, see 32 and 33 Vict., c. 51, s. 6.
- As to execution of judgment in County Court by *fi. fa.* in and out of jurisdiction; property liable to, and sale of goods taken in execution, see 9 and 10 Vict., c. 95, s. 94, &c.; 15 and 16 Vict., c. 54; 19 and 20 Vict., c. 108; 28 and 29 Vict., c. 99.
- As to effect and execution of decrees in Admiralty cases, see 31 and 32 Vict., c. 71.
- As to staying of execution of judgment in County Court by writ of error and supersedeas, see 9 and 10 Vict., c. 95.
- As to no removal of judgment of County Court, by motion, writ of error, *certiorari*, &c., see 13 and 14 Vict., c. 61.
- As to registry of judgments of County Court, see 15 and 16 Vict., c. 54; 19 and 20 Vict., c. 108; 28 and 29 Vict., c. 99.
- As to registry of judgments of County Court in Admiralty cases, see 31 and 32 Vict., c. 71.
- As to removal of bonds from Common Pleas Register, see 19 and 20 Vict., c. 108.
- As to suitors money in County Court, see 9 and 10 Vict., c. 95, s. 112.
- As to suitors money in County Court in equitable matters, see 30 and 31 Vict., c. 142.
- As to fees in County Court, see 19 and 20 Vict., c. 108; 21 and 22 Vict., c. 95; 28 and 29 Vict., c. 99; 30 and 31 Vict., c. 131, s. 46.
- As to suing Judge of County Court in adjoining district, see 19 and 20 Vict., c. 108.
- As to vacation for Judge of County Court in September, &c., see 28 and 29 Vict., c. 99.
- As to attorney when to be heard in County Court, see 15 and 16 Vict., c. 54, s. 10.

As to *baillif* of County Court authorized to act as broker, see 12 and 13 Vict., c. 101.

As to reference by Chancery Court of matters to County Court, see 9 and 10 Vict., c. 95, s. 22; 28 and 29 Vict., c. 99.

As to reference by Chancery Court of winding up of company to County Court, see 30 and 31 Vict., c. 131, ss. 41-43.

As to jurisdiction of Chancery Judge in Chambers, district Courts of Bankruptcy, and County Court as to charities, see 16 and 17 Vict., c. 137; 23 and 24 Vict., c. 136.

As to Shire or County Courts in County Palatine of Chester, see 27 Hen. VIII. c. 5; 32 Hen. VIII., c. 43; 33 Hen. VIII., c. 13.

As to execution of judgment in Inferior Court by County Court, see 35 and 36 Vict., c. 86, s. 6.

As to grant of Probate and administration through registrar of County Court where estate does not exceed £100, see 36 and 37 Vict., c. 52.

#### NOTE 90.—Criminal Trials.—(§ 47, p. 37.)

The Act for the further amendment of the administration of the Criminal Law (11 and 12 Vict., c. 78), will be found at length among the "Statutes Referred to" (pp. 84-86).

#### NOTE 91.—Five of them at the least.—(§ 47, p. 37.)

The quorum here mentioned is the same *totidem verbis* as that provided by section 3 of 11 and 12 Vict., c. 78.

#### NOTE 92.—One of such chiefs at the least shall be part.—

(§ 47, p. 37.)

By sec. 32 (p. 26), Her Majesty in Council may order the abolition, on vacancy, of the distinction of the offices of the chiefs here mentioned.

#### NOTE 93.—Every motion for a new trial (§ 48, p. 37.)

In note 69 (p. 180) the four cases in which no appeal is to lie from the High Court of Justice to the Court of Appeal are set out.

By Rule of Procedure 48 in the schedule to the Act (p. 80) new trials are further restricted. By it a new trial is not to be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court there has been some substantial wrong or miscarriage.

#### NOTE 94.—Judges not to sit on Appeal from their own judgments.—(§ 54, p. 39.)

This section will prevent the Lord Chancellor from sitting in the Court of Appeal on the hearing of an Appeal from the Chancery Division of the High Court, since the effect of sections 5 and 31, is to make the Lord Chancellor a member of such Divisional Court. This will probably be amended by some future Act, since the Lord Chancellor will rarely, if ever, sit in the Court of First Instance, and it will be most desirable to have the benefit of his services on Appeals from the Chancery Divisional Court.—Pat. Stat. 1873, p. 156.

#### NOTE 95.—Acts relating to the Judicial Committee.—(§ 55, p. 40.)

These Acts are given in Note 1 (p. 133). The provision specially referred to here is 3 and 4 Will. IV., c. 41, s. 30.

#### NOTE 96.—Such right as may now exist to have particular cases submitted to the verdict of a Jury.—(§ 56, p. 40)

For Example :—

20 and 21 Vict., c. 77, s. 35, gives an heir at law who is party to Probate Cause, upon making application to the Court for that purpose, the right in all cases to have questions of fact tried by a jury.

20 and 21 Vict., c. 85, s. 23, gives the right to either party in suits for dissolution of marriage to insist on having contested matters of fact tried by a jury.

**NOTE 97.—The Common Law Procedure Act, 1854.—**(§ 59, p. 42.)

The sections of this Act here referred to will be found among the "Statutes Referred to."

**NOTE 98.—Prothonotary or District Prothonotary of any Local Court.—**(§ 60, p. 42.)

32 and 33 Vict., c. 37, authorizes the appointment of District Prothonotaries of the Court of Common Pleas of the County Palatine of Lancaster; but by the Judicature Act, 1873, the Court has been united and consolidated with the Supreme Court, and, therefore, on the 2nd November, 1874, ceases to exist.

**NOTE 99.—The County Courts Act, 1867.—**(§ 67, p. 45.)

The provisions of this Act, made applicable to the High Court, will be found among the "Statutes Referred to" (pp. 91-92).

**NOTE 100.—The Law relating to Jurymen or Juries.—**(§ 72, p. 48.)

The principal statutes in connection with this subject are as follows:—

- As to indictor not to serve on jury at trial of indicted, see 25 Edw. III., stat. 5, c. 3.
- As to delivery of copy of panel of jury, before session, see 42 Edw. III., c. 11.
- As to who to serve on jury on inquest by escheator, see 8 Hen. VI., c. 16.
- As to bailiff, &c., not to return his officers on jury, see 23 Hen. VI., c. 9; 6 Geo. IV., c. 50, s. 62.
- As to qualification for juror in towns by possession of personal estate, see 23 Hen. VIII., c. 13.
- As to oath of sheriff, bailiff, &c., as to return of jurors, see 27 Eliz., c. 12.
- As to writ of attain against juror abolished but embracery punished, see 6 Geo. IV., c. 50.
- As to regulation of all matters relating to special and common jury, except juries of coroners, or of sheriffs in cities and liberties, see 6 Geo. IV., c. 50; 25 and 26 Vict., c. 107.
- As to challenge of jury in criminal trial, see 7 and 8 Geo. IV., c. 28, s. 3.
- As to service on jury and removal of exemptions in boroughs, see 5 and 6 Will. IV., c. 76, ss. 121-123; 7 Will. IV., and 1 Vict., c. 78, s. 36; 33 and 34 Vict., c. 77, s. 8.
- As to summoning of jury to adjourned quarter sessions, see 1 and 2 Vict., c. 4.
- As to taking of affirmation, by jury, not to be stated in setting out legal proceedings, see 6 and 7 Vict., c. 85.
- As to expenses of making out lists of jurors, see 7 and 8 Vict., c. 101, s. 60.
- As to summoning, &c., of common and special, and inquiry by jury before sheriff for determining disputed compensation under Lands Clauses Consolidation Act, see 8 and 9 Vict., c. 18, ss. 39-57.
- As to summoning and panel of, and view by common, or special jury for Nisi Prius, see 15 and 16 Vict., c. 76, s. 104, &c.; 17 and 18 Vict., c. 125, s. 58, &c.
- As to summoning, &c., of special jury for superior courts, in London and Middlesex, see 33 and 34 Vict., c. 77, ss. 16-18.
- As to summoning, &c., of jury for Probate Court, see 20 and 21 Vict., c. 77.
- As to summoning, &c., of jury for Divorce Court, see 20 and 21 Vict., c. 85.
- As to summoning, &c., of jury on revenue side of Exchequer Court, see 28 and 29 Vict., c. 104.
- As to summoning, &c., of jury for view in Crown cases, see 28 and 29 Vict., c. 104, s. 46.

As to ascertaining value of house which qualifies juror in Metropolis, see 32 and 33 Vict., c. 67.

As to regulations as to qualification, summoning, &c., of special and common jury, see 33 and 34 Vict., c. 77.

As to qualification of special juror, see 33 and 34 Vict., c. 77, s. 6.

As to qualification of juror, the same in England and Wales, see 33 and 34 Vict., c. 77, s. 7.

As to regulations by sheriff as to attendance of jury, see 33 and 34 Vict., c. 77, s. 21.

As to allowance of fire and refreshments to jury, see 33 and 34 Vict., c. 77, s. 23.

As to exemptions from serving on jury :—

(I.) Of nonconformist minister, see 1 Will. and Mar., c. 18; 19 Geo. III., c. 44; 52 Geo. III., c. 155; 33 and 34 Vict., c. 77, s. 9. (II.) Of Roman Catholic priest, see 31 Geo. III., c. 32, s. 8; 33 and 34 Vict., c. 77, s. 9. (III.) Of attorney, see 6 Geo. IV., c. 59, s. 2; 33 and 34 Vict., c. 77, s. 9. (IV.) Of officers of excise, see 7 and 8 Geo. IV., c. 53. (V.) Of officers of post office, see 7 Will. IV., and 1 Vict., c. 33; 33 and 34 Vict., c. 77, s. 9. (VI.) Of officers of inland revenue, see 16 and 17 Vict., c. 59, s. 17; 33 and 34 Vict., c. 77, s. 9. (VII.) Of officers of customs, see 16 and 17 Vict., c. 107, s. 7; 33 and 34 Vict., c. 77, s. 9. (VIII.) At Cornwall sessions by attendance at stannaries court, see 2 and 3 Vict., c. 58. (IX.) Of Magistrates and officers of Metropolitan police courts, see 2 and 3 Vict., c. 71, s. 4; 33 and 34 Vict., c. 77, s. 9. (X.) Of medical practitioner, see 21 and 22 Vict., c. 90; 33 and 34 Vict., c. 77, s. 9. (XI.) Of officers of army reserve, see 30 and 31 Vict., c. 110, s. 17; 33 and 34 Vict., c. 77, s. 9. (XII.) Various from serving on juries or inquests, see 6 Geo. IV., c. 50; 33 and 34 Vict., c. 77, s. 9. (XIII.) Of income tax commissioners, see 34 and 35 Vict., c. 103, s. 30.

As to affirmation in lieu of oath by juror in civil or criminal proceeding, unwilling to be sworn from conscientious motives and statement thereof in legal proceeding, see 30 and 31 Vict., c. 35.

As to qualifications of alien to serve as juror, see 33 and 34 Vict., c. 77, s. 8.

As to forcible entry forbidden and restoration of party ousted, and jury in cases of forcible entry, see 8 Hen. VI., c. 8.

As to grand jury in borough, see 5 and 6 Will. IV., c. 76; 16 and 17 Vict., c. 79.

As to swearing witnesses before grand jury, see 19 and 20 Vict., c. 54.

As to summoning of grand jury of Middlesex at Westminster, see 35 and 36 Vict., c. 52.

As to outlaw, disqualified to serve on jury or inquest, see 33 and 34 Vict., c. 77, s. 10.

As to county rate, custos rotulorum, justices, quarter sessions, clerk of the peace, coroner, and juries in liberty of Ripon, see 6 and 7 Will. IV., c. 87.

#### NOTE 101.—All Acts of Parliament relating to the several Courts and Judges.—(§ 76, p. 49.)

The principal Acts of Parliament are given in the notes to the various Courts, *supra*.

#### NOTE 102.—Queen's Remembrancer.—(§ 77, p. 50.)

The principal statutes in connection with the Queen's Remembrancer are as follows :—

As to duties of Queen's Remembrancer, see 3 and 4 Will. IV., c. 99.

As to appointment of Queen's Remembrancer, see 22 and 23 Vict., c. 21.

As to duties in revenue matters in Court of Exchequer, see 5 Vict., c. 5; 5 and 6 Vict., c. 86.

As to regulation of the office, see 22 and 23 Vict., c. 21.

As to approval of Sheriffs of London and Middlesex, and render of rents by Corporation of London in office of Queen's Remembrancer, see 22 and 23 Vict., c. 21.

As to salary of Queen's Remembrancer, see 29 and 30 Vict., c. 101.

As to issue of writ of *distringas* from office of Queen's Remembrancer, see 28 and 29 Vict., c. 104.

**NOTE 103.—Masters.—**(§ 77, p. 60.)

The principal statutes in connection with the Masters are as follows:—

As to appointment, salaries, duties, and superannuation of Masters and their officers, see 7 Will. IV. and 1 Vict., c. 30; 17 and 18 Vict., c. 94; 22 Vict., c. 28, s. 14; 29 and 30 Vict., c. 101; 30 and 31 Vict., c. 68; 32 and 33 Vict., c. 18.

As to transaction of business by Masters at Chambers, see 30 and 31 Vict., c. 68.

As to abolition of Masters of Chancery Court, see 15 and 16 Vict., c. 80; 17 and 18 Vict., c. 100; 23 and 24 Vict., c. 149.

As to ascertainment of damages by master, instead of under writ of enquiry, see 15 and 16 Vict., c. 76, s. 94.

See also statutes mentioned in notes, "High Court of Chancery of England;" "Superior Courts of Common Law."

**NOTE 104.—Secretaries, Registrars.—**(§ 77, p. 50.)

For the statutes referring to these officers, see statutes collected in notes of the various Courts and Judges.

**NOTE 105.—Clerks of Records and Writs.—**(§ 77, p. 50.)

The statutes referring to these offices will be found collected in Note 5, "The High Court of Chancery of England;" in the second division of the list of statutes, "Officers and Income."

**NOTE 106.—Associates.—**(§ 77, p. 50.)

The statutes referring to this officer will be found among the statutes collected in Note 36, "Commission of Assize;" and Note 24, "Superior Court of Common Law."

**NOTE 107.—Prothonotaries.—**(§ 77, p. 50.)

See statutes in Note 34, "Inferior Courts of Common Law;" see also Note 28, "Prothonotary or District Prothonotary of Local Court."

**NOTE 108.—Chief or other Clerks.—**(§ 77, p. 50.)

The statutes referring to this subject are thus distributed:—

For Chief Clerks and Clerks to Judges, see notes to the various Courts and Judges, and note, "Superior Courts of Common Law."

For Clerk of Assize and Clerk of the Crown, see note 36, "Commission of Assize."

As to Clerk of the Crown in Chancery, his duties, salary, and the fees to be taken by him, see 3 and 4 Will. IV., c. 84; 5 and 6 Will. IV., c. 47; 7 and 8 Vict., c. 77; 15 and 16 Vict., c. 87, s. 23; 17 and 18 Vict., c. 94; 32 and 33 Vict., c. 94.

**NOTE 109.—Commissioner to Administer Oaths.—**(§ 82, p. 55.)

The principal statutes on this subject are as follows:—

As to commissioners for taking affidavits for common law courts in England, see 29 Cha. II., c. 5.

As to commissioners for taking affidavits for common law courts in Scotland and Ireland, see 3 and 4 Will. IV., c. 42.

As to commissioners for taking affidavits for common law courts in London, Isle of Man, and Channel Islands, see 22 Vict., c. 16.

As to commissioners for taking affidavits in Great Britain for Irish Court, see 55 Geo. III., c. 157.

As to taking of affidavit by diplomatic and consular officer abroad, see 6 Geo. IV., c. 87; 18 and 19 Vict., c. 42.

As to taking of affidavit for registry of deeds or wills, see 16 and 17 Vict., c. 78.

As to register of commissioners for taking affidavit, see 23 and 24 Vict., c. 137.

See also note, "The High Court of Admiralty."



**NOTE 110.—Solicitors, Attorneys, and Proctors.—(§ 87, p. 58.)**

The principal statutes in connection with this subject are as follows:—

- As to doing suit to county, hundred, tithing, or lords court, by attorney, see 20 Hen. III., c. 10.
- As to in what cases defendants may make attorney, see 6 Edw. I., c. 8; 20 Eliz., c. 5; 31 Eliz., c. 10.
- As to making a general attorney for whole circuit, see 13 Edw. I. (*Stat. West.* 2), c. 10.
- As to making attorney by persons beyond the seas, or at a distance, see 27 Edw. I. (*Ord. de lib. Perg.*), c. 5; 7 Ric. II., c. 14.
- As to making attorney by outlaw, see 7 Hen. IV., c. 13.
- As to acting as attorney after conviction for forgery, perjury, or barrettry, see 12 Geo. I., c. 29.
- As to fees of attorney on service of writs, see 5 Geo. II., c. 27.
- As to articulated clerks of attorney, and of notaries public, &c., see 6 Geo. IV., c. 46; 6 and 7 Vict., c. 73.
- As to articulated clerks of attorney, not disqualified though attorney, &c., is uncertificated, see 7 and 8 Vict., c. 86, s. 4.
- As to exemption of attorney from serving on juries, see 6 Geo. IV., c. 50, s. 2; 33 and 34 Vict., c. 77, s. 9.
- As to exemption of attorney from serving as parish constable, see 5 and 6 Vict., c. 109, s. 6.
- As to competency of person appointed by Queen, Treasury, Customs, Inland Revenue, &c., to act as attorney, see 9 Geo. IV., c. 25; 6 and 7 Vict., c. 73; 16 and 17 Vict., c. 107, s. 323.
- As to practice as attorney on revenue side of Exchequer, see 5 and 6 Vict., c. 86.
- As to enrolment of copy of articles of clerkship of attorney, where articles lost, see 2 and 3 Vict., c. 33, s. 9.
- As to articulated clerks to examination, admission, and enrolment of attorney, registrar of (Incorporated Law Society), regulations respecting practice by, and practice as, of unqualified persons forbidden, see 6 and 7 Vict., c. 73; 7 and 8 Vict., c. 86; 14 and 15 Vict., c. 88; 23 and 24 Vict., c. 127.
- As to annual certificate of attorney, see 6 and 7 Vict., c. 73; 23 and 24 Vict., c. 127; 33 and 34 Vict., c. 97, ss. 59-64.
- As to admission as attorney of Scotch writers to the signet, solicitors, and procurators, see 23 and 24 Vict., c. 127, s. 15.
- As to admission as attorney, of Scotch members of the faculty of advocates, see 35 and 36 Vict., c. 81.
- As to taxation of bill of cost of attorney, see 6 and 7 Vict., c. 73; 14 and 15 Vict., c. 88; 23 and 24 Vict., c. 127; 33 and 34 Vict., c. 28.
- As to attorney, not exempt by privilege from County Court, see 12 and 13 Vict., c. 101, s. 18.
- As to practice as attorney on common law side of Court of Chancery, see 12 and 13 Vict., c. 109.
- As to when attorney to be heard in County Court, see 15 and 16 Vict., c. 54, s. 10.
- As to admission of colonial attorney to practice in England, see 20 and 21 Vict., c. 39.
- As to lien of attorney for costs on property recovered and interest on costs, see 23 and 24 Vict., c. 127.
- As to registry of appointment of attorney, as commissioners to take oaths, affidavits, acknowledgments, &c., see 23 and 24 Vict., c. 127.
- As to appointment of attorneys by company, out of United Kingdom, see 25 and 26 Vict., c. 89, s. 55; 27 and 28 Vict., c. 19.
- As to agreement by attorney with client for remuneration, see 33 and 34 Vict., c. 28, ss. 4-15.
- As to power of attorney to take security for future costs, see 33 and 34 Vict., c. 28, s. 16.
- As to power of attorney to act as proctor, except in certain courts, see 33 and 34 Vict., c. 28, s. 20.
- As to taxation of bill of attorney, for business of sanitary authority, see 25 and 26 Vict., c. 79, s. 50.

As to recovery, taxation, and amount of costs of agent or attorney on private bills (I.) in House of Commons, see 10 and 11 Vict., c. 69; (II.) in House of Lords, see 12 and 13, Vict., c. 78.

As to disqualification of attorney or proctor as Justice of the Peace in county where practising, see 34 and 35 Vict., c. 18.

As to taxation and payment of costs of attorney after death of lunatic, see 23 and 24 Vict., c. 127, s. 29.

As to when attorney may be admitted as notary public, see 3 and 4 Will. IV., c. 70.

As to admission of proctor and of articulated clerk of, as attorney or solicitor, see 20 and 21 Vict., c. 77, ss. 43-44.

As to stamp duty for admission of colonial attorney in England, see 20 and 21 Vict., c. 39, s. 6.

As to stamp duties, special regulation in case of (I.) certificate of attorney and others, see 33 and 34, Vict., c. 97, ss. 59-64; (II.) letters of attorney, proxis and note papers, see 33 and 34 Vict., c. 97, ss. 102-104.

#### NOTE 111.—Position of Lord Chancellor.—(§ 94, p. 61.)

*Precedence.*—By 31 Hen. VIII., c. 10, he has precedence above all temporal peers, except the King's sons, nephews, and grandsons, whether he be a peer or a commoner. If he be a peer he ought regularly to be placed at the top of the Duke's bench on the left of the throne; and if a commoner, upon "the uppermost sack in the Parliament Chamber, called the Lord Chancellor's Woolsack." For convenience here he generally sits, though a peer, then he puts the question and acts as prolocutor; but this place is not considered within the House, and when he is to join in debate as a peer, he leaves the woolsack and stands in front of his proper seat, at the top of the Duke's bench (Lamb, L C I, 16).

*Appointment.*—The appointment to the office (which is not affected by this Act) in very remote times was by patent or writ of Privy Seal, or by suspending the Great Seal by a chain round his neck (see 4 Just, 87; Camden, p. 131), but for many ages the Sovereign has conferred the office by simply delivering the Great Seal to the person who is to hold it, verbally addressing him by the title which he is to bear. He then instantly takes the oaths (see note to § 9), and is clothed with all the authority of the office, although usually before entering upon the public exercise of it, he has been installed in it with great pomp and solemnity.

*Tenure of Office.*—The proper tenure of office is during pleasure, and it is determined by the voluntary surrender of the Great Seal into the hands of the Sovereign, or by his demanding it in person, or sending a messenger for it with a warrant under the Privy Seal or sign manual.

*Etiquette.*—By a standing order of the House of Lords the Lord Chancellor, when addressing their lordships, is to be uncovered; but he is covered when he addresses others, including a deputation of the Commons. When he appears in his official capacity in the presence of the Sovereign, or receives messengers of the House of Commons at the bar of the House of Lords, he bears in his hand the purse containing (or supposed to contain) the Great Seal. On other occasions it is carried by his purse bearer, or lies before him as the emblem of his authority. When he goes before a Committee of the House of Commons he wears his robes, and is attended by his mace bearer and purse bearer. Being seated, he puts on his hat to assert the dignity of the Upper House, and then having uncovered, give his evidence. Although he no longer addresses the two Houses at the opening and close of a Session of Parliament, he still is the bearer of the Royal Speech, which, kneeling, he delivers into the hand of the Sovereign. When the Prince of Wales is to take the oaths for any purpose in the Court of Chancery, the Lord Chancellor meets him as he approaches Westminster Hall, and waits upon him into Court. The Prince's Chancellor holds the book, and the oaths are read by the Master of the Rolls. The Lord Chancellor sits covered, while the oaths are administered the Bar standing. The Lord Chancellor then waits on the Prince to the end of Westminster Hall (Dickens XXIX). When a younger son of the King is to take the oaths, the Lord Chancellor meets him at the steps leading from the Hall to the Court, and conducts him into Court. The Master of the Rolls reads the oaths, and the Senior Master in Chancery holding the book. His Lordship sits

covered, the Bar standing. He then uncovers, takes the purse in his hand, and attends His Royal Highness down the steps into the Hall (Dickens XXX). When Peers take the oaths before the Lord Chancellor the Deputy-Usher holds the books, while a Deputy of the Clerk of the Crown reads the oaths. The Lord Chancellor sits covered during the time the Peers are in Court, except at their entrance and departure, when he rises and bows to them (Dickens XXXII). When the Lord Mayor of London comes into the Court of Chancery on Lord Mayor's-day, and by the Recorder invites the Lord Chancellor to dinner at Guildhall, the Lord Chancellor remains covered, and does not return any answer to the invitation (Camp Chan. I., 28).

*Apparel.*—By stat. 24, Hen. VIII., c. 13, he is entitled "to weare in his apparell velvet satene and other silkes of any colours *excepte* *purpure*, and any manner of fures *except cloke gennettes*."

**NOTE 112.—Commissioners of Her Majesty's Treasury.**—

(§ 100, p. 61.)

The principal statutes in connection with the Commissioners are as follows:—

As to powers of Commissioners of Her Majesty's Treasury in Scotland, see 6 Ann, c. 53.

As to offices of Lord High Treasurer of Great Britain and of Ireland united, and may be executed by commission, and two Commissioners for Ireland, see 56 Geo. III., c. 98.

As to all officers of public revenue under control of Commissioners of Her Majesty's Treasury, see 56 Geo. III., c. 98.

As to accounts to be laid before Parliament by Commissioners of Her Majesty's Treasury, see 56 Geo. III., c. 98.

As to powers of Commissioners of Her Majesty's Treasury as to revenues of Crown in Scotland, see 5 and 6 Will. IV., c. 58.

As to signatures of two Commissioners of Her Majesty's Treasury sufficient see 12 and 13 Vict., c. 89.

As to powers of Commissioners of Her Majesty's Treasury as to certain payments out of, and to public moneys, see 17 and 18 Vict. c. 94.

As to limitation of amount, and application of chest fund of Commissioners of Her Majesty's Treasury, see 24 and 25 Vict., c. 127; 36 and 37 Vict., c. 56.

As to credits for supply services, issues to principal accountants, regulation of, and powers as to audit of accounts of public accountants, and other quasi-public accounts, see 29 and 30 Vict., c. 39.

As to interpretation of Act of Parliament, "Commissioners of Her Majesty's Treasury," see 56 Geo. III., c. 98.

As to return of fines, forfeitures, and recognizances by Clerk of Parliament of House of Commons, by officers of common law court, coroners, clerks of assize, of market, of commissions, &c., and levy thereof for commissioners of Treasury, see 3 and 4 Will. IV., c. 99; 22 and 23 Vict., c. 21.

**NOTE 113.—Act of Parliament** —(§ 100, p. 62.)

The principal statutes in connection with Acts of Parliament are as follows:—

As to Royal assent to Act of Parliament, see 33 Hen. VIII., c. 21.

As to Act of Parliament relating to Court of Request or Conscience to be public, see 27 Geo. II., c. 16.

As to indorsement on Act of Parliament of date of Royal Assent, and date of commencement of operation, see 33 Geo. III., c. 13.

As to Queen's Printers copies of English and Irish Acts of Parliament before 1801, evidence in the other country, see 41 Geo. III., c. 90, s. 9.

As to effect on expiring Act of Parliament, of continuing Act passed after the expiration, see 48 Geo. III., c. 106.

As to reference to deceased Sovereign, as living not to invalidate Act of Parliament, see 11 Geo. IV., and 1 Will. IV., c. 71; 7 Will. IV., and 1 Vict., c. 60.

As to division of Act of Parliament into sections without enacting words, see 13 and 14 Vict., c. 21.

As to citation in Act of Parliament of prior Act, see 13 and 14 Vict., c. 21.

As to repealed Act not revived by repeal of repealing Act, see 13 and 14 Vict. c. 21.

As to continuance of repealed Act of Parliament until substituted provisions come into force, see 13 and 14 Vict., c. 21.

As to Act of Parliament to be public unless contrary declared, see 13 and 14 Vict., c. 21.

As to reference by Church Building Commissioners to sections of Acts of Parliament by numbers, see 7 and 8 Vict., c. 58, s. 5.

As to evidence of certain official and public certificates, official documents, proceedings of company, bye law, registers, &c., made admissible by Act of Parliament receivable without proof of seal or stamp, see 8 and 9 Vict., c. 113.

As to confirmation of Acts of Parliament, notwithstanding defect of writs, see 12 Chas II., c. 1; 1 Will. and Mar., c. 1; 2 Will. and Mar., c. 1.

#### INTERPRETATION OF WORDS.

"England," including Wales and Berwick-upon-Tweed, see 20 Geo. II., c. 42.

"Commissioners of His Majesty's Treasury," see 56 Geo. III., c. 98.

"Gallon," in Excise Acts, see 6 Geo. IV., c. 58, s. 6.

Masculine, plural, and singular words, &c., in all criminal statutes, see 7 and 8 Geo. IV., c. 28.

"England," "Great Britain," and "United Kingdom," in Excise Acts, see 7 and 8 Geo. IV., c. 53, s. 3.

Masculine and singular words, and of "writing," &c., in Excise Acts, see 4 and 5 Will. IV., c. 51, s. 30.

Acts requiring publication of notices in Church, see 7 Will. IV., and 1 Vict., c. 45.

Division of county, including Ely, see 7 Will. IV., and 1 Vict., c. 63.

"Spirits," in Excise Acts, see 11 and 12 Vict., c. 123, s. 25.

Various terms as to Excise stamps and taxes in Acts and documents after establishment of Inland Revenue office, see 12 and 13 Vict., c. 1, s. 17.

Act requiring signature of three Commissioners of the Treasury, see 12 and 13 Vict., c. 89.

Masculine, plural, and singular words, and of "month," "county," "land," "oath," "swear," "affidavit," in, see 13 and 14 Vict., c. 21.

"Municipal Corporations in England," see 16 and 17 Vict., c. 79.

"Legally or duly qualified medical practitioner," see 21 and 22 Vict., c. 90, s. 34.

Acts referring to 4 and 5 Will. IV., c. 24 (superannuation), see 23 Vict., c. 25.

"The Board of Trade," see 24 and 25 Vict., c. 47.

Division of County as regards Sussex, see 28 and 29 Vict., c. 37.

"County Court," see 30 and 31 Vict., c. 142, s. 35.

"United Church of England and Ireland," in acts and documents, &c., see 32 and 33 Vict., c. 42, s. 69.

"Poor Law Board," "Secretary of State," and "Privy Council," in various Acts, &c., after establishment of Local Government Board, see 34 and 35 Vict., c. 70, s. 7.

#### NOTE 114.—Writ.—(R.P. 2, p. 65)

Although the practice of the Courts is to a very great extent altered, and with it many of the provisions respecting writs, the various statutes in force at the passing of the Judicature Act on the subject of writs, may be found useful by the student, if not by the practitioner.

The principal statutes connected with this subject are as follows:—

As to time for delivery of writ before justices, see 13 Edw. I. (*Stat. West.*) c. 10.

As to false return to writ, see 13 Edw. I. (*Stat. West.*), c. 39; 28 Edw. I. (*Art. sup. Cart.*), c. 16.

As to writ to be provided for suitors in all cases, see 13 Edw. I. (*Art. sup. Cart.*), c. 50.

As to writs, none touching the common law to go forth under any of the petty seal, see 28 Edw. I. (*Art. sup. Cart.*), c. 6.

As to writ to be in King's name, see 27 Hen. VIII., c. 24.

As to description of defendant in writ, see 1 Hen. V., c. 5; 5 Eliz., c. 23.

As to teste and return and service of writ, see 27 Hen. VIII., c. 24; 1 Will. IV., c. 3; 1 Will. IV., c. 7; 2 and 3 Will. IV., c. 39; 3 and 4 Will. IV., c. 67.

As to abolition of special, for small suits, and regulation of writs in inferior

*counts*, see 5 Geo. II., c. 27.

As to abolition of various writs, see 3 and 4 Will. IV., c. 27, s. 36; 23 and 24 Vict., c. 126.

As to sealing of writ on abolition of separate seal office of Queen's Bench and Common Pleas, see 8 and 9 Vict., c. 34.

As to form, issue, renewal, &c., of writ for commencement of actions and duties of attorney, with respect to them, see 15 and 16 Vict., c. 76, ss. 2-25.

As to service of writ in and out of jurisdiction, see 15 and 16 Vict., c. 76, ss. 14-25.

As to indorsement on writ of particulars of demand, see 15 and 16 Vict., c. 76, s. 25.

As to new forms of writ, see 15 and 16 Vict., c. 76, s. 224; 17 and 18 Vict., c. 125, s. 98; 23 and 24 Vict., c. 126.

As to new forms of writ on revenue side of Exchequer, see 22 and 23 Vict., c. 21; 28 and 29 Vict., c. 104.

As to priority of writ issuing from different courts, see 19 and 20 Vict., c. 108, s. 47.

As to amendment of writ, pleading, &c., on account of misjoinder of parties at trial, or on plea of abatement, see 15 and 16 Vict., c. 76, ss. 34-9; 23 and 24 Vict., c. 126.

As to writ for arrest of criminal in one county when indicted in another, see 5 Edw. III., c. 11.

As to writ of capias for arrest of felon, see 20 Edw. III., st. 5, c. 14.

As to giving bail by person brought up on writ of habeas corpus, see 56 Geo. III., c. 100.

As to writ of execution to fix bail returnable in vacation, see 17 and 18 Vict., c. 125, s. 90.

As to service of writs in detached parts of county, see 2 and 3 Will. IV., c. 39.

As to execution of judgment in inferior Court, restrictions as to staying by writ of error, see 19 Geo. III., c. 70; 7 and 8 Geo. IV., c. 71.

As to writs of execution, see 1 and 2 Vict., c. 110.

As to issue and renewal of writs for execution on common law judgment, see 15 and 16 Vict., c. 76; 17 and 18 Vict., c. 125, s. 94.

# RULES OF COURT

UNDER THE

SUPREME COURT OF JUDICATURE ACT, 1873,

36 and 37 Vict., c. 66.

[Note.—Where no other provision is made by the Act or these rules the present procedure and practice remain in force.]

## ORDER I.

### *Writ of Summons and Procedure, &c.*

#### ORDER I R. 1-4.

General  
form of  
writ.

1. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1 in Part I of Schedule (A), hereto, with such variations as circumstances may require.

Leave for  
writ out of  
jurisdiction.

2. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a Court or Judge.

Form of writ  
and notice  
out of  
jurisdiction

3. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Form No. 2 in Part I of Schedule (A) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3 in the same part with such variations as circumstances may require.

Procedure  
unaltered on  
bill of  
exchange.

4. With respect to actions upon a bill of exchange or promissory note, commenced within six months

after the same shall have become due and payable, the procedure under the Bills of Exchange Act, 18 and 19 Vict. c. 67 shall continue to be used.

O. I.  
R. 4-7.  
O. II.  
R. 1-3.

5. With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts 1 & 2 Wm. 4. c. 58. and 23 and 24 Vict. c. 126. shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

Procedure in  
interpleader

6. The writ of summons in every Admiralty action in rem shall be in Form No. 4 of Part I of Schedule (A) hereto, with such variations as circumstances may require.

Form in  
admiralty  
action in  
rem.

7. Every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

Date and  
teste.

## ORDER II.

### *Indorsements of Claim.*

1. The indorsement of claim shall be made on every writ of summons before it is issued.

Endorse-  
ment before  
issue.

2. In the indorsement required by Rule 2 of the Schedule to the Act it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the Court or Judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

Precise  
complaint or  
remedy not  
essential.

Amendment  
of endorse-  
ment.

3. The indorsement of claim may be to the effect of such of the Forms in Part II of Schedule (A) hereto as shall be applicable to the case, or if none be found applicable then such other similarly concise form as the nature of the case may require.

General  
form.

O. II.  
R. 4-a.  
O. III.  
R. I.

Form where  
parties are  
representa-  
tive.

Form in  
probate  
cases.

Form in  
cases of  
debt or  
liquidated  
demand.

4. If the plaintiff sues, or the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show, in manner appearing by the statement in Schedule (A) hereto, Part II, sec. VIII, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

5. In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

6. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Schedule (A) hereto, Part II, sec. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

### ORDER III.

#### *Indorsement of Address.*

Address of  
plaintiff and  
of solicitor  
and agent  
indorsed.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written commu-



fications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

O. III.  
R. 1-3.  
O. IV.  
R. 1, 2

2. A plaintiff suing in person shall indorse upon every writ of summons, and notice in lieu of service of a writ of summons, his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

Address of  
plaintiff  
endorsed.

*[The above two rules are to apply to all cases in which the writ of summons is issued out of the London Office, or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London Office.]*

3. In all other cases where a writ of summons is issued out of a district registry, it shall be sufficient for the solicitor to give on the writ the address of the plaintiff, and his own name or firm, and his place of business within the district, or for the plaintiff if he sues in person to give on the writ his place of residence and occupation, and if his place of residence be not within the district, an address for service within the district.

Endorse-  
ment where  
writ issued  
out of  
District  
Registry.

## ORDER IV.

### *Issue of Writs of Summons.*

#### I. PLACE OF ISSUE.

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of the registry of any district.

Issue out of  
any district  
registry.

2. In all cases where a defendant neither resides nor carries on business within the district out of the registry whereof a writ of summons is issued, there

Writ to state  
defendant  
(if not  
resident in  
district

**O. IV.  
R. 2-6.**

registry)  
may appear  
either in  
London or  
District  
Registry.

Writ to state  
defendant  
(if resident  
in district  
of registry)  
must appear  
in district  
registry.

shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option, either at the district registry or the London office, or a statement to the like effect.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

**2. OPTION TO CHOOSE DIVISION IN CERTAIN CASES.**

In all but  
admiralty  
causes.

4. Subject to the power transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognizance of the High Court of Admiralty if the said Act had not passed shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty division, as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the Court. If so marked for the Chancery division the same shall be assigned to one of the Judges of such division by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to such power of transfer) may think fit.

Assignment  
to judge in  
Chancery  
Division.

**3. GENERALLY.**

Preparation  
of writ.

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as hereby directed in the case of proceedings directed to be printed.

Sealing of  
writ.

6. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

7. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

O. IV.  
R. 7-11.  
Signed copy  
of writ and  
endorsement  
for filing.

8. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which Cause Books have heretofore been kept by the Clerks of Records and Writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such last-mentioned Cause Books.

Filing in  
Cause Book.

Action dis-  
tinguished.

9. Notice to the proper officer of the assignment of an action to any division of the Court under section 35 of the Act, or under Rule 4 of this Order, shall be sufficiently given by leaving with him the copy of the writ of summons.

Notice of  
division.

#### 4. IN PARTICULAR ACTIONS.

10. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

Affidavit in  
probate  
actions.

11. In Admiralty actions *in rem* no writ of summons shall issue until an affidavit by the Plaintiff or his agent has been filed, and the following provisions complied with:—

Affidavits in  
admiralty  
actions in  
*rem*.

(a.) The affidavit shall state the name and description of the party on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

(b.) In an action of wages the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of

O. IV.  
R. 11, 12.  
O. V.  
R. 1.

the institution of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London [*a copy of the notice shall be annexed to the affidavit*].

(c). In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

(d). In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.

Court or  
Judge may  
waive  
affidavit, &c.

(e). The Court or Judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry the production of the bond.

Admiralty  
second  
action.

12. If, when any property is under arrest in Admiralty, a second or subsequent action is instituted against the same property, the solicitor in such second action may, subject to the preceding Rules, take out a writ of summons *in rem* and cause a caveat against the release of the property to be entered in the Caveat Release Book hereinafter mentioned.

## ORDER V.

### *Concurrent Writs.*

Issue of con-  
current writs  
when, how,  
and for how  
long.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be im-

pressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

O. V.  
B. 1, 2.  
O. VI.  
B. 1, 2.  
In force for  
same period  
as writ.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Writs within  
concurrent  
with those  
out of  
jurisdiction  
and vice  
versa.

## ORDER VI.

### *Disclosure by Solicitors and Plaintiffs.*

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

Endorsed  
solicitor to  
declare if  
privy to writ

If not privy  
stay of pro-  
ceedings.

2. When a writ is sued by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow

where firm  
sues plain-  
tiffs to de-  
clare part-  
ners names  
and  
addresses.

On pain of  
stay of pro-  
ceedings.

Action  
continued in  
name of  
firm.

O. VII.  
R. 1-2.

as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

## ORDER VII.

### *Renewal of Writ.*

Writ to be  
in force  
twelve  
months.

Judge or  
District  
Registrar  
may renew  
writ.

Form of  
memoran-  
dum for  
renewal.

Seal of  
Court evi-  
dence of re-  
newal.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Judge or the District Registrar, for leave to renew the writ; and the Judge or Registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal, bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5 in Schedule (A), Part I; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

## ORDER VIII.

O. VIII.  
R. 1-6.*Service of Writ of Summons.*

## I. ON PARTICULAR DEFENDANTS.

1. When husband and wife are both defendants to the action service on the husband shall be deemed good service on the wife, but the Court or a Judge may order that the wife shall be served with or without dispensing with service on the husband.

On a husband and wife.

2. When an infant is a defendant to the action service on his or her father or guardian, or if none then upon the person with whom the infant resides or under whose care he or she is shall, unless the Court or Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

On infant.

3. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action service on the committee of the lunatic or on the person with whom the person of unsound mind resides or under whose care he or she is shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant.

On lunatics not so found.

## 2. ON PARTNERS AND OTHER BODIES.

4. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to the Rules herein-after contained, such service shall be deemed good service upon the firm.

On partners sued in name of firm.

5. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process, upon any Corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of

On corporation, &c., as provided by any statute.

O. VIII.  
R. 5-11

persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

## 3. IN PARTICULAR ACTIONS.

For possession of vacant land.

6. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwellinghouse or other conspicuous part of the property.

In admiralty actions in rem, service by marshal.

7. In Admiralty actions in rem, the writ shall be served by the Marshal or his substitutes, whether the property to be arrested be situate within the Port of London or elsewhere within the jurisdiction of the Court, and the solicitor issuing the writ shall, within six days from the service thereof, file the same in the registry.

In admiralty actions in rem how service effected.

8. In Admiralty actions *in rem* service of a writ of summons against ship, freight, or cargo on board is to be effected by the marshal or his officer nailing or affixing the original writ for a short time on the main mast or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.

If cargo landed or transhipped.

9. If the cargo has been landed or transhipped, service of the writ of summons to arrest the cargo and freight shall be effected by placing the writ for a short time on the cargo, and on taking off the process by leaving a true copy upon it.

If access refused to cargo.

10. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

## GENERALLY.

Endorsement on writ of time of service.

11. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service

Affidavit thereon.



of such writ shall mention the day on which such indorsement was made.

O. IX.  
R. 1.  
O. X.  
R. 1-3.

## ORDER IX.

### *Substituted Service.*

Every application to the Court, or a Judge, under Rule 5 of the Schedule to the said Act, for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

Affidavit to support application under R.P. 5.

## ORDER X.

### *Service out of the jurisdiction.*

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction.

When service out of jurisdiction may be allowed.

2. In probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or Judge be allowed out of the jurisdiction.

In probate actions.

3. Every application for an order for leave to serve such writ or notice on a defendant out of the juris-

What evidence to be given on application.

O. X.  
R. 3-5.  
O. XI.  
R. 1-6.

diction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made.

Order to  
limit time  
for appear-  
ance.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

Notices to be  
served as  
writs.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served.

## ORDER XI.

### *Appearance.*

When in  
London.

1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London.

When in  
District  
Registry.

2. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

When in  
either.

3. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

When action  
to proceed in  
district  
registry.

4. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear in the district registry and the others make default in appearance, then, subject to the power of removal herein-after provided, the action shall proceed in the district registry.

When  
action to  
proceed in  
London.

5. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the Court or a Judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the

action may proceed in the district registry notwithstanding such appearance in London.

**O. X.  
R. 5-13.**

6. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of the delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

Memorandum of appearance—contents.

7. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and, if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

Solicitor's place of business and address for service.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

When defendant appears in person.

9. If the memorandum does not contain such address, it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff.

Effect of deficient or fictitious contents.

10. The Memorandum of Appearance shall be in the Form No. 6, Schedule (A), Part I, with such variations as the circumstances of the case may require.

Form of memorandum.

11. Upon receipt of a Memorandum of Appearance, the officer shall forthwith enter the appearance in the cause book.

Entry of appearance.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

Partners to appear individually.

13. If two or more defendants in the same action

Two defendants appear—

O. XI.  
R. 13-20.

ing by same  
solicitor.

Solicitor  
breaking  
und taking  
to appear.

Time for  
appearance.

In probate  
actions.

In admiralty  
action in  
rem.

For recovery  
of land.

Appearance  
of person in  
possession  
not a party.

Appearance  
of landlord.

Title of ap-  
pearance  
when person  
not named  
appears.

shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

16. In probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

17. In an Admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the Registry.

18. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

19. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

20. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or Judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant

or defendants, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

O. XI.  
R. 20-22.  
O. XII.  
R. 1.

Notice of  
appearance.

21. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor; such notice to be served within four days after appearance; and an appearance where the defence is not so limited, shall be deemed an appearance to defend for the whole.

Notice of  
limit of de-  
fence to part  
of land.

Service of  
notice.

22. The notice mentioned in the last preceding rule may be in the form No. 7 in Part I of Schedule A hereto, with such variations as circumstances may require.

Form of  
notice.

## ORDER XII.

### *Default of Appearance.*

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff may apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care

Plaintiff may  
apply that  
guardian be  
appointed  
to infant or  
lunatic.

Prelimi-  
naries to ap-  
plication.

O. XII.  
R 1-6.

of his father or guardian) served upon or left at the dwelling-house of the father or guardian if any of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.

Affidavit of  
service  
under R. P.  
7, 8.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under Rule 7 or 8 of the Schedule to the said Act or under any of the following Rules of this order, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Judgment  
against de-  
faulting de-  
fendants  
under  
R. P. 7.  
when one  
appears.

3. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money, under Rule 7 of the Schedule to the said Act, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

Judgment  
by default  
when claim  
is for debt.

4. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

Interlocu-  
tory judg-  
ment by de-  
fault in case  
of damages.

5. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered and a writ of

inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

**O. XII.  
R. 5-9.**

Writ of  
inquiry.

6. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Judgment  
by default in  
action for  
recovery of  
land.

7. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other preceding Rules of this order as to such other claim so indorsed.

In mesne  
profits, &c.

8. In actions assigned by the 34th section of the said act to the Chancery Division, and in Probate actions, and in all other actions not by the Rules in this order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service the action may proceed as if such party had appeared.

In cases  
assigned to  
Chancery  
division, in  
probate  
actions, and  
cases not  
specially  
provided for.

9. In an Admiralty action *in rem*, in which an appearance has not been entered, the plaintiff may proceed as follows:—

Proceedings  
upon default  
in admiralty  
action in  
*rem*.

(a.) He may, after the expiration of twelve days from the filing of the writ of summons, take out a notice of sale, to be advertised by him in two or more public journals to be from time to time appointed by the judge.

(b.) After the expiration of six days from the

**O. XII.  
R. 9.**

Proceedings  
upon default  
in admiralty  
action in  
rem.

advertisement of the notice of sale in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the said notices have been duly advertised, with copies of the journals annexed, as also such proofs as may be necessary to establish the claim, and a notice of motion to have the property sold.

(c.) If, when the motion comes before the Judge, he is satisfied that the claim is well founded he may order the property to be appraised and sold, and the proceeds to be paid into the registry.

(d.) If there be two or more actions by default pending against the same property, it shall not be necessary to take out a notice of sale in more than one of the actions; but if the plaintiff in the first action does not, within eighteen days from the filing of the writ in that action, take out and advertise the notice of sale, the plaintiff in the second or any subsequent action may take out and advertise the notice of sale, if he shall have filed in the registry a writ of summons in rem in such second or subsequent action.

(e.) Within six days from the time when the proceeds have been paid into the registry, the plaintiff in each action shall, if he has not previously done so, file his proofs in the registry and have the action placed on the list for hearing.

(f.) In an action of possession, after the expiration of six days from the filing of the writ, if an appearance has not been entered, the plaintiff may, on filing in the registry a memorandum, take out a notice of proceeding in the action, to be advertised by him in two or more public journals to be from time to time appointed by the Judge.

(g.) After the expiration of six days from the advertisement of the notice of proceedings in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the notice has been duly advertised with copies of the journals annexed, as also such



proofs as may be necessary to establish the action, and shall have the action placed on the list for hearing.

O. XII.  
R. 9.  
O. XIII.  
R. 1-4

(h.) If, when the action comes before the Judge he is satisfied that the claim is well founded, he may pronounce for the same, and decree possession of the vessel accordingly.

### ORDER XIII.

#### *Leave to Defend where Writ specially Indorsed.*

1. The application by the plaintiff for leave to enter final judgment after appearance to a writ specially indorsed under Rule 7 of the Schedule to the said Act shall be made by summons returnable not less than two clear days after service.

Application.

2. The defendant may show cause against such application by offering to bring into Court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. And the Judge may, if he shall think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom.

When and how defendant may show cause.

3. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim; or that any part of his claim is admitted to be due; the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any; as to suspending execution, or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Judgment for part where defence goes only to part.

4. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has

Judgment against one defendant and leave to defend by other.

O. XIII.  
R. 4-6.  
O. XIV.  
O. XV.  
R. 1-2.

not such defence and ought not be permitted to defend, the former may be permitted to defend and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

Terms of defence.

5. Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise as the Court or a Judge may think fit.

#### ORDER XIV.

##### *Application for Account under Rule 8 of Schedule to the Act.*

How and when application to be made.

An application for an account under Rule 8 of the Schedule to the said Act shall be made by summons, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

#### ORDER XV.

##### *Parties.*

All persons may be joined as plaintiffs

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

Costs for misjoinder.

All persons may be joined as defendants.

2. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alterna-

tive. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

O. XV.  
R. 2-3.

3. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff plaintiffs upon such terms as may seem just.

Substitution  
or addition  
of plaintiff.

4. Subject to the provisions of the said Act, and the schedule thereto, and these rules, the provisions as to parties, contained in section 42 of 15 & 16 Victoria, chapter 86, shall be in force as to actions in the High Court of Justice.

15 and 16  
Vict., c. 86,  
s. 42, to be in  
force.

5. Subject as last aforesaid, in all Probate actions the rules as to parties, heretofore in use in the Court of Probate, shall continue to be in force.

Probate  
rules as to  
parties to be  
in force.

6. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

Applications  
to alter  
parties.

7. Where a defendant is added, unless otherwise ordered by the Court or Judge, the plaintiff shall file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

Where a de-  
fendant is  
added, writ  
to be  
amended.

8. If a statement of claim has been delivered previously to such defendant being added, the same shall unless otherwise ordered by the Court or Judge be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ or summons

and amend-  
ed state-  
ment to  
be delivered.

**O. XV.**  
**R 8-11.** or notice or afterwards, within four days after his appearance.

Issue of  
notice of  
claim by de-  
fendant  
against third  
parties.

9. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1 in Schedule (B) hereto with such variations as circumstances may require, and there-with shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

Filing.

Contents.

Form.

Statement to  
be served.

Notice by  
plaintiff to  
third parties  
under R.P.  
12.

10. When under Rule 12 of the Schedule to the said Act it is made to appear to the Court or a Judge at any time before or at the trial that a question in the action should be determined, not only as between the plaintiff and defendant but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or a Judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the Judge may postpone such trial as he may think fit.

Dispute of  
claim by  
third party.

11. If a person not a party to the action, who is served as mentioned in Rule 9, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In de-

fault of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a Judge shall think fit.

O. XV.  
R. 11, 12.  
O. XVI.  
R. 1-3.

12. If a person not a party to the action served under these Rules appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined; and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or a Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

Made of trial  
as against  
third parties.

## ORDER XVI.

### *Joinder of Causes of Action.*

1. No cause of action shall unless by leave of the Court or a Judge be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held.

No cause to  
be joined  
with action  
for recovery  
of land.

2. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity.

By trustee in  
bankruptcy.

3. Claims by or against husband and wife may be

Husband  
and wife.

O. XVI.  
R. 3-8.  
O. XVII.

joined with claims by or against either of them separately.

By executor  
or adminis-  
trator.

4. Claims by or against an executor or administrator as such may be joined with claims by or against him personally; provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Joint and  
several  
claims.

5. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

R.P. 22.

6. The last three preceding Rules shall be subject to Rule 22 in the Schedule to the Act, and to the Rules hereinafter contained.

Application  
by defendant  
to confine  
action.

7. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding.

Order to ex-  
clude causes  
and amend-  
ment of Writ  
and state-  
ment.

8. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a Judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

## ORDER XVII.

### *Actions by and against Lunatics and Persons of unsound Mind.*

Committees  
and guard-  
ians to sue  
and be sued  
as practised  
in Court  
Chancery.

In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Act have sued as plaintiffs or would have been liable to be sued as

defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose.

O. XVIII.  
R. 1-4

## ORDER XVIII.

### *Pleading Generally.*

1. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary.

Pleadings to state facts concisely, in numbered paragraphs.

2. Every pleading which shall contain less than three folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading shall be printed.

When to be printed.

3. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

How to deliver pleadings,

to be filed defendant not appearing.

4. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the Division to which and the Judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any,

Marking of pleadings.

**O. XVIII.**  
**R. 5-11.**

delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

What relief to be claimed.

5. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only the statement of claim shall show it.

Distinct claims or defences to be stated separately.

6. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim, founded upon separate and distinct facts.

Set-off to be so stated.

7. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim.

Denial of representative character to be specific.

8. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

Denial of interest in defendant in probate action.

9. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

No abatement.

10. No plea or defence shall be pleaded in abatement.

Amendment to supersede new assignment.

11. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim.



12. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases herein-before mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as herein-before mentioned.

**O. XVIII.  
R. 12-17.**

Pleas by  
tenant in  
possession.

13. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the Court or a Judge.

Plea of not  
guilty.

No other de-  
fence with-  
out leave.

14. Every allegation of fact in any pleading, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

Facts not  
denied to be  
taken as ad-  
mitted.

15. Each party in any pleading must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released.

Necessary  
facts and  
defences to  
be pleaded to  
prevent sur-  
prise.

16. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party filing the same.

No new or  
inconsistent  
claim or fact  
to be pleaded  
except by  
amendment.

17. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply

Specific and  
not general  
denial of  
facts  
necessary.

**O. XVIII.**  
**R. 17-22.**

Effect of  
joinder of  
issue.

Denial of  
facts must  
not be  
evasive but  
to the sub-  
stance.

Denial of  
contract to  
be denial of  
making

Contents of  
material  
document  
when stated  
briefly.

Motives to  
be alleged  
without cir-  
cumstances.

to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

18. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

20. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition

of the mind of any person it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

O. XVIII.  
R. 22-27.

23. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

Notice to be alleged without form.

24. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Implied contract or relation to be alleged with general reference without details.

25. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

Facts presumed by law not to be pleaded.

[E.g.]—Consideration for a bill of exchange where the plaintiff sues only on the Bill, and not for the consideration as a substantive ground of claim.]

26. Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

District registry.

27. In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars:—

Preliminary Act to be filed in action for collision between vessels.

(a.) The names of the vessels which came into collision and the names of their masters.

**O. XVIII.****R. 27.****O. XIX.****R. 1, 2.**Contents of  
preliminary  
Act.

- (b.) The time of the collision.
- (c.) The place of the collision.
- (d.) The direction of the wind.
- (e.) The state of the weather.
- (f.) The state and force of the tide.
- (g.) The course and speed of the vessel when the other was first seen.
- (h.) The lights, if any, carried by her.
- (i.) The distance and bearing of the other vessel when first seen.
- (k.) The lights, if any, of the other vessel which were first seen.
- (l.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
- (m.) What measures were taken, and when, to avoid the collision.
- (n.) The parts of each vessel which first came into contact.

Pleadings  
dispensed  
with by con-  
sent.

If both Solicitors consent, the Court or a Judge may order the preliminary acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

**ORDER XIX.***Pleading Matters arising pending the Action.*Grounds of  
defence be-  
fore expira-  
tion of time  
limited for  
filing  
defence.Grounds of  
defence to  
set-off before  
reply.After such  
times  
further

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.
2. Where any ground of defence arises after the defendant has delivered a statement of defence, or

after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the Court or a Judge, deliver a further defence or further reply, as the case may be, setting forth the same.

O. XIX.  
R. 2, 3.  
O. XX.  
R. 1.

defence or  
reply may be  
filed by  
leave.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in the form No. 2 in Schedule B. hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

Plaintiff may  
deliver con-  
fession of  
supervening  
defence and  
sign judg-  
ment for his  
costs.

Form

## ORDER XX.

### *Statement of Claim.*

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows:—

(a.) If the defendant shall not state that he does not require the delivery of a statement of claim the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within six weeks from the time of the defendant's entering his appearance.

Statement to  
be delivered  
within 6  
weeks  
of appear-  
ance.

(b.) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a

Statement  
may be  
delivered at  
any time

**O. XX.  
R. 1-4.**

not exceed-  
ing 6 weeks  
after appear-  
ance,

but judge  
may make  
order as to  
costs of state-  
ment not  
required.

In probate  
actions.

In admiralty  
actions in  
rem.

In specially  
endorsed  
writs.

Form of  
notice.

Time for  
delivery of  
further  
statement.

statement of claim : Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the Court or a Judge.

(c.) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a Judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default ; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

3. In Admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

4. Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement. Such notice may be either written or printed or partly written and partly printed, and may be in the form No. 3 in Schedule B. hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed, and if no time be so limited then within the time prescribed by Rule 1 of this Order.

## ORDER XXI.

O. XXI.  
R. 1-6.*Defence.*

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge.

Time limited when statement of claim delivered.

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a Judge.

When statement not delivered.

3. Where leave has been given to a defendant to defend under Rule 7 in the Schedule to the Act, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order.

When leave given to defend under R.P. 7.

4. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

Order as to costs when fact should have been admitted or not denied.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

Title of defence where third parties are defendants to counter-claim.

6. Where any such person as in the last preceding rule mentioned is not a party to the action,

Such third parties to be summoned.

O. XXI.  
R. 8-10. he shall be summoned to appear by being served  
O. XXII.  
R. 1. with a copy of the defence, and such service shall  
be regulated by the same rules as are herein-before

**Form.**

**Appearance  
of third  
parties.**

**Reply by  
third parties.**

**Order to  
exclude  
counter-  
claim on  
application  
of any party.**

**In probate  
actions.**

contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the form No. 4 in Schedule B hereto, or to the like effect.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

10. In probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate.

## ORDER XXII.

### *Reply and Subsequent Pleadings.*

**Time for  
reply.**

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of



the defences shall have been delivered, unless the time shall be extended by the Court or a Judge.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit.

3. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

O. XXII.  
R. 2, 3.  
O. XXIII.  
O. XXIV.  
R. 1-3.

No pleadings  
after reply  
without  
leave.

Time for  
pleas after  
reply.

### ORDER XXIII.

#### *Close of Pleadings.*

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

Pleadings to  
close on  
joinder of  
issue.

### ORDER XXIV.

#### *Amendment of Pleadings.*

1. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

One amend-  
ment by  
plaintiff  
without  
leave.

Time.

2. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

Time for  
defendant  
to amend  
set-off.

3. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the de-

Disallow-  
ance of  
amendment  
made with-  
out leave.

O. XXIV.  
R. 3-8.

livery to him of the amended pleading, apply to the Court, or a Judge, to disallow the amendment, or any part thereof, and the Court or Judge, may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

Order to  
amend after  
amendment  
by other  
party with-  
out leave.

4. Where any party has amended his pleading under Rule 1 or 2 of this order the other party may apply to the Court or a Judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

Order for  
other  
amendment  
on terms.

5. In all cases not provided for by the preceding rules of this order, application for leave to amend any pleading may be made by either party to the Court or a Judge in Chambers, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

Order to  
amend void  
by lapse of  
time.

6. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a Judge.

What  
amendments  
must be  
printed.

7. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous, or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

Marking of  
amended  
pleadings.

8. Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same

is so amended, and of the day on which such amendment is made, in manner following, viz. :  
 "Amended day of ."

O. XXIV.  
 R. 8, 9.  
 O. XXV.  
 R. 1-4.

9. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

Delivery of  
 amended  
 pleadings.

## ORDER XXV.

### *Demurrer.*

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the Court as against the party demurring.

By whom,  
 to what, and  
 for what  
 cause.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 1 in Schedule C. hereto. If there is no ground, or only a frivolous ground of demurrer stated, the Court or Judge may set aside such demurrer, with costs.

To state  
 specifically  
 if to whole  
 or part.

Form.

Costs.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action.

Delivery.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he shall combine such demurrer and other pleading.

Combination  
 of defence  
 and  
 demurrer.

**O. XXV.  
R. 5—10.****Plea and  
demurrer to  
a demurrer.**

5. If the party demurring desires to be at liberty to plead as well as demur to the matter demurred to, he may, before demurring, apply to the Court or a Judge for an order giving him leave to do so; and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may **make** an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

**Entry of  
demurrer for  
argument.**

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument.

**Pleadings  
not to be  
amended  
while  
demurrer  
pending.**

7. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the Court or a Judge; and no such order shall be made except on payment of the costs of the demurrer.

**Costs of  
successful  
demurrer to  
pleadings.**

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer.

**The like to  
statement of  
claim.**

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

**Effect of  
successful  
demurrer  
in other  
cases.**

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding Rule, then (subject to the

power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

O. XXV.  
R. 10-13.  
O. XXVI.  
R. 1-3.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

Costs of  
overruled  
demurrer.

12. Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

Pleadings  
after de-  
murrer over-  
ruled.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 2 in Schedule C.

Entry of  
demurrer.

## ORDER XXVI.

### *Default of Pleading.*

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs for want of prosecution, and on the hearing of such application the Court or Judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

Application  
on non-  
delivery of  
statement of  
claim.

Order there-  
on.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

In claim for  
debt, judg-  
ment upon  
default.

3. When in any such action as in the last preceding Rule mentioned there are several defendants,

**O. XXVI.  
R. 3-7.**

Default by  
some defend-  
ants.

In claim for  
damages in-  
terlocutory  
judgment  
upon default  
and writ of  
enquiry.

Order to  
assess dam-  
ages other-  
wise.

Default by  
some defend-  
ants in  
action for  
damages.

Default in  
action for  
debt ; also  
for damages.

In action for  
recovery of  
land.

if one of them make default as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the Plaintiff may enter a judgment that the person

whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

O. XXVI.  
R. 7-13.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 4 and 5.

Where mesne profits, &c., are claimed in action for recovery of land.

9. In probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed, notwithstanding such default.

In probate actions.

10. In all other actions than those in the preceding rules of this Order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to.

In all other actions.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

Pleadings closed upon default of pleadings.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering

In case of third parties.

**O. XXVI.** any pleading, the opposite party may apply to the  
**R. 13, 14.** Court or a Judge for such judgment, if any, as  
**O. XXVII.** upon the pleadings he may appear to be entitled to.  
**R. 1-4.** And the Court may order judgment to be entered  
 accordingly, or may make such other order as may  
 be necessary to do complete justice between the  
 parties.

**Setting aside judgment by default.** 14. Any judgment by default, whether under this Order or under any other of these rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

## ORDER XXVII.

### *Payment into Court in Satisfaction.*

**Time of payment into Court.** 1. Where any action is brought for a debt or pecuniary damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a Judge at any later time, pay into Court a sum of money by way of satisfaction or amends in respect of any such cause of action. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

**Payment to be pleaded.**

**To whom to be paid.** 2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5 in the Schedule B. hereto.

**Notice to plaintiff.**

**Manner of payment out**

3. Money paid into Court as aforesaid shall be paid out to the plaintiff, or to his solicitor on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the Court.

4. The plaintiff, if payment into Court is made before delivering a defence, may within four days



after receipt of notice of such payment, or if such payment is first stated in a defence delivered then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice to the defendant in the Form No. 6 in Schedule (B.) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

O. XXVII.  
R. 4.  
O. XXVIII.  
R. 1-3.

Plaintiff may accept in full and sign judgment for costs.

### ORDER XXVIII.

#### *Discovery and Inspection.*

1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the Court or a Judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

Time and manner of delivering interrogatories.

Only one set without order.

2. Interrogatories may be in the Form No. 7 in Schedule (B) hereto, with such variations as circumstances may require.

Form.

3. If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or to be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Where the interrogated is a body Corporate.

**XXXVIII**  
**R. 4-10.**

Application  
to strike out  
objection-  
able interro-  
gatory.

4. Any party called upon to answer interrogatories, whether by himself or by any member or officer, may, within four days after service of the interrogatories, apply at chambers to strike out any interrogatory, on the ground that it is scandalous or irrelevant, or is not put *bonâ fide* for the purposes of the action, or that the matter inquired after, is not sufficiently material at that stage of the action, or on any other ground. And the Judge, if satisfied that any interrogatory is objectionable, may order it to be struck out.

How  
answered.

5. Interrogatories shall be answered by affidavit to be filed within ten days, or within such further time as a Judge in chambers may allow.

When  
printed,  
form of  
of answer.

6. An affidavit in answer to interrogatories shall, if exceeding three folios, be printed and may be in the Form No. 8 in Schedule (B) hereto, with such variations as circumstances may require.

Objection  
may be  
taken.

7. Any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit mentioned in the preceding rule.

Application  
on neglect to  
answer.

8. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further either by affidavit or by *vivâ voce* examination, as the Judge may direct.

Application  
for  
discovery.

9. Any party may, without filing any affidavit, apply to a Judge in chambers for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

Affidavit  
as to  
documents.

10. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and it may be in the Form No. 9 in Schedule (B) hereto, with such variations as circumstances may require.

Form.

11. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Schedule (B) hereto.

**O XXXVIII**  
**R. 11-15.**

Form of  
notice to  
produce.

12. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 10, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No 11 in Schedule (B) hereto, with such variations as circumstances may require.

Notice of  
time for  
inspection.

Form.

13. If the party served with notice under Rule 11 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge in Chambers for an order for inspection.

Default of  
notice.

14. Every application for an order for inspection of documents shall be to a Judge at Chambers. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

Application  
for order to  
inspect to  
whom, and  
how made.

15. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue

When  
objection  
made to  
discover or  
inspect.

**XXXVIII**  
**R. 15-19.**

Court may  
order  
question to  
be tried.

Attachment  
in case order  
not complied  
with.

Service and  
non-service  
of order.

Attachment  
of defaulting  
solicitor.

Use of  
answers to  
interroga-  
tories at  
trial.

or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

16. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

17. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

18. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

19. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others: Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

ORDER XXIX.

*Admission of Documents.*

~~O. XXIX.~~  
~~R. 1-2.~~  
~~O. XXX.~~  
~~R. 1-3.~~

1. A notice to admit documents may be in the Form No. 12 in Schedule (B) hereto. Form of notice.

2. An affidavit of the solicitor in the cause, or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions. Affidavit by solicitor, evidence of admissions.

ORDER XXX.

*Questions of Law without Pleadings.*

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. Special case on questions of law.

2. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the Judges shall be delivered by the plaintiff. Contents. The argument. How printed and filed.

3. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so When leave necessary.

O. XXX far as the same affect the interest of such married  
 R. 3, 4. woman, infant, or person of unsound mind, are true.  
 O. XXXI.  
 R. 1-3.

Entry.

Form.

4. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Schedule (B) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

## ORDER XXXI.

### *Proceedings in District Registries.*

Area of  
district  
registries.

1. For the purpose of these rules the district of every district registry in the county of Lancaster shall mean the district thereto assigned by any order of Her Majesty in Council, and the district of every district registry elsewhere than in the county of Lancaster, shall mean a circle with a radius of three miles, as the crow flies, from the registry.

What  
proceedings  
to be taken  
in district  
registries.

2. Where an action proceeds in the district registry all proceedings, except where by these rules it is otherwise provided, or the Court or a Judge shall otherwise order, shall be taken in the district registry, down to and including the entry for trial of the action or issues therein; or if the plaintiff is entitled to enter final judgment or to obtain an order for an account by reason of the default of the defendant, then down to and including such judgment or order; and such judgment or order as last aforesaid shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

What entries  
to be made  
in London  
and how.

3. Where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except such judgment or orders for account as mentioned in the last preceding rule, and except orders made by the district registrar under the authority and jurisdiction vested

in him under these rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filed with the proceedings in the action.

O. XXXI.  
R 3-10.

4. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the Court or a judge shall otherwise direct.

When writs of execution to issue from district registry.

5. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a judge at chambers, except such as by these Rules a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions is precluded from exercising.

Authority of registrar.

6. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these Rules.

Applications to registrars.

7. If any matter appears to the district registrar proper for the decision of a Judge, the registrar may refer the same to a Judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

Reference by registrar to a judge.

8. Any person affected by any order or decision of a district registrar may appeal to a Judge. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a Judge or the registrar.

Appeal from registrar and how.

9. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a Judge or the registrar.

No stay of proceedings.

10. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the Court or a Judge as fully as any other officer of the Court, and every proceeding in a district registry shall be subject to the control of the Court or a Judge, as fully as a like proceeding in London.

Registrar subject to control of judge.

**O. XXXI.  
R. 11-13.**

Appeals in  
chancery  
division.

When de-  
fendant may  
remove  
action from  
district  
registry as of  
right.

11. Every reference to a Judge by or appeal to a Judge from a district registrar in any action in the Chancery Division shall be to the Judge to whom the action is assigned.

12. In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following :—

Where the writ is specially indorsed under sect.

7 of the schedule, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIII. ; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so :

Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order XIII. ; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so :

Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

How defend-  
ant may  
remove  
action.

13. Any defendant desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly : Provided, that if the Court or a Judge shall be satisfied that the defendant giving such notice is a merely formal



defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the district registry notwithstanding such notice.

O. XXXI.  
R. 13-15.  
O. XXXII.  
R. 1-3.

14. In any case not provided for by the last two preceding rules, any party to an action proceeding in a district registry may apply to the Court or a Judge, or to the district registrar, for an order to remove the action from the district registry to London, and such Court, Judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms if any, as shall seem just.

Application to remove in other cases.

15. Whenever any proceedings are removed from the district registry to London the district registrar shall transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

Transmission of documents in removed cases.

## ORDER XXXII.

### *Trial.*

1. Subject to the provisions of the following rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in Rule 30 of the schedule to the Act.

How and when notice of trial may be given.

2. If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a Court or Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in Rule 30 of the schedule to this Act.

Default by plaintiff to give notice.

3. If the plaintiff or defendant desires to have the action tried in any other mode than that specified in the notice of trial, he shall apply to the Court, or a Judge, for an order to that effect,

Application for mode of trial not mentioned in notice.

**O. XXXII.**  
**R. 8-11**

**Contents of  
notice of  
trial.**

**Form.**

**Length of  
notice.**

**Notice  
before entry.**

**Operation of  
notice in  
London and  
Middlesex.**

**Elsewhere.**

**How notice  
to be  
counter-  
manded.**

**Default to  
enter cause  
after notice.**

**Entry for  
trial.**

within four days from the time of the service of the notice of trial, or within such extended time as a Court or Judge may allow.

4. Notice of trial shall state whether it is for the trial of the action or of issues therein; and in actions in the Queen's Bench, Common Pleas, and Exchequer Divisions, the place and day for which it is entered for trial. It may be in the Form No. 14 in Schedule (B), with such variations as circumstances may require.

5. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court, or a Judge. Short notice of trial shall be four days' notice.

6. Notice of trial shall be given before entering the action for trial.

7. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

8. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

9. No notice of trial shall be countermanded, except by consent, or by leave of the Court, or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

10. If the party giving notice of trial for London or Middlesex omits to enter the cause for trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days enter the cause for trial.

11. If notice of trial is given for elsewhere than in London or Middlesex, either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry.

12. The party entering the action for trial shall deliver to the officer a copy of the whole of the pleadings in the action, for the use of the Judge at the trial. Such copy shall be in print, except as to such parts, if any, of the pleadings as are by these rules permitted to be written.

~~O. XXXII.~~  
~~R. 12-18.~~  
Proceedings  
on entry for  
trial.

13. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

When de-  
fendant fails  
to appear at  
trial.

14. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter claim, shall be entitled to judgment dismissing the action, but if he has a counter claim, then he may prove such claim so far as the burden of proof lies upon him.

When  
plaintiff fails  
to appear.

15. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

Application  
to set aside  
judgment  
obtained on  
default.

16. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

Adjourn-  
ment of trial.

17. Upon the trial of an action, the Judge may, at or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or Judge.

Power of  
judge as to  
entry or  
non-entry of  
judgment.

18. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas, or Exchequer Division, where the officer present at the trial is not the

Entry of  
findings of  
fact in assize  
cases.

**O. XXXII.  
R. 18-26.**

Entry of  
absolute  
judgment  
how  
authorised.

The like  
when judg-  
ment  
subject to  
leave.

Power to  
direct trials  
without  
jury.

Power to  
direct trials  
before judge  
and jury.

Trials with  
assessors.

Power to  
order trial  
by com-  
missions  
under sec.  
29.

Trials before  
a referee.

officer by whom judgments ought to be entered, the associate shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose.

19. If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly.

20. If the Judge shall direct that any judgment be entered for any party subject to leave to move, judgment shall be entered accordingly upon the production of the associate's certificate.

21. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Act could, without any consent of parties, be tried without a jury.

22. The Court or a Judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a Judge with a jury.

23. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct.

24. In any action the Court or a Judge of the division to which the action is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly.

25. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena,

and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the referee a public court of justice.

O. XXXII.  
R. 26-27.  
O. XXXIII.  
R. 1-4.

26. Subject to any such order as last aforesaid, the referee shall have the same authority in the conduct of any reference or trial as a Judge of the High Court when presiding at any trial before him.

Authority of  
referee.

27. Nothing in these rules contained shall authorise any referee to commit any person to prison or to enforce any order by attachment or otherwise.

Limitation  
of authority  
of referee.

### ORDER XXXIII.

#### *Evidence by Affidavit.*

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

Time for  
delivery of  
affidavits by  
plaintiff.

2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Time for  
delivery of  
affidavits by  
defendant.

3. Within seven days after the expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

Time for  
delivery of  
affidavits in  
reply.

4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examina-

Cross-  
examination  
of deponents  
notice and  
when to  
be given.

~~XXXIII~~  
~~R. 4-6.~~  
~~XXXIV~~  
~~R. 1, 2.~~

tion before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

How attendance of deponent to be compelled.

Affidavits to be printed.

5. The party to whom such notice as is mentioned in the last preceding Rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings.

## ORDER XXXIV.

### *Motion for New Trial.*

Application for new trial, how, and when to be obtained.

Service of copy order.

1. A party desirous of obtaining a new trial must apply for the same to a Divisional Court by motion for an order calling upon the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within four days after the trial, if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as the Court or a Judge may allow.

2. A copy of such order shall be served on the opposite party within four days from the time of the same being made.

3. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

O XXXIV  
R. 3, 4.  
O. XXXV  
R. 1-4.

When new trial may be ordered.

4. An order to show cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action.

Effect of order to show cause.

### ORDER XXXV.

#### *Motion for Judgment.*

1. Except where by the Act or the Schedule thereto, or by these rules, it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

How judgment obtained.

2. Where at the trial of an action the Judge or a Referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the Judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion, and the relief sought, and that the motion is pursuant to leave reserved.

Where judgment subject to leave.

3. Where at the trial of an action the Judge or Referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to the other parties within ten days after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

Motion for judgment when not directed to be entered.

4. Where at the trial of an action before a jury the Judge has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and enter any other judgment, on the ground that the judgment

Motion to set aside judgment directed to be entered by judge before jury.

**O. XXXV.  
R. 4-8.**

directed to be entered is wrong by reason of the Judge having caused the finding to be entered wrongly, with reference to the finding of the jury upon the question or questions submitted to them.

Without  
jury.

5. Where at the trial of an action the Judge or a Referee has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

Form of  
motion, and  
time of hear-  
ing under  
s. 48.

6. On every motion made under the provisions of the 48th section of the Act, or under either of the last two preceding rules the order shall be an order to show cause, and shall be returnable in eight days. The motion shall be made within four days after the trial if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as a Court or Judge may allow.

Motion on  
issues or  
questions of  
fact.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

Application  
where some  
only of issues  
or questions  
have been  
tried.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for



leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

O. XXXV  
R. 8-11.  
O XXXVI  
R. 1.

9. No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

Leave  
necessary for  
motion after  
one year.

10. Upon a motion for judgment, or for a new trial, or any other motion made under the provisions of the 48th section of the Act, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

Order upon  
motion  
under s. 48.

11. None of the rules of this order shall apply to applications under s. 40. of the Schedule to the Act, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit.

Applications  
under R.P.  
40.

## ORDER XXXVI.

### *Entry of Judgment.*

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in

Mode of  
entry.

**ORDER XXXVI**  
R. 1-5.

**ORDER XXXVII**  
R. 1, 2.

Date of  
entry when  
judgment  
by court or  
judge in  
Court.

Date of  
entry in  
other cases.

Officer to  
examine  
affidavits  
necessary to  
entry of  
judgment.

Entry of  
judgment  
on return of  
order or  
writ.

the action, such copy shall be in print, except such parts (if any) of the pleadings as are by these rules permitted to be written.

2. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

4. Where under the Act, or the Schedule thereto, or these rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

5. Where by the Act, or Schedule, or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

## ORDER XXXVII.

### *Execution.*

Mode of  
enforcing  
judgment  
for payment  
of money.

For payment  
of money  
into court.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof.

2. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

O.  
XXXVII.  
R. 3-8.

For recovery  
of land.

4. A judgment for the recovery of any property other than land or money may be enforced :

For recovery  
of other  
property.

By writ of delivery of the property :

By writ of attachment :

By writ of sequestration.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

To do other  
act.

6. In these Rules the term "writ of execution" shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this order shall be applicable to the case.

Interpreta-  
tion of "writ  
of execu-  
tion," and  
"issuing  
execution."

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

Application  
for execu-  
tion on  
conditional  
judgment.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following :—

Execution  
in case of  
partners.

(a.) Against any property of the partners as such :

(b.) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner :

~~XXXVII~~  
O.  
R. 8-11.

Application  
to issue  
execution  
against other  
persons.

Judgment or  
copy to be  
produced on  
issuing.

Præcipe.

Endorsement  
of solicitor's  
name on  
writ of  
execution.

(c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

9. No writ of execution shall be issued without the production to the officer by whom the same should be issued, of the judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by the solicitor of the party issuing it, or by the party issuing it, if he do so in person.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be,

mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

O.  
XXXVII.  
R. 11-15.

12. Every writ of execution shall bear date of the day on which it is issued. Date of writ.

13. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered. Levy of poundage.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed. Endorsment of direction to sheriff.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows:— When writ may be sued out.

(a.) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

(b.) The Court or Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods herein-before prescribed.

**O.**  
**XXXVII.**  
**R. 16-20.**

Writ how  
long in  
force and  
how  
renewed.

16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner herein-after provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

Evidence of  
renewal.

17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

Execution  
within six  
years.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

Application  
to issue  
execution  
after six  
years.

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise, as shall seem just.

How orders  
enforced.

20. Every order of the Court or a Judge, whether in an action or matter, may be enforced in the same manner as a judgment to the same effect.

21. In cases other than those mentioned in Rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

~~O.~~  
~~XXXVII.~~  
~~R. 21-24.~~  
~~O.~~  
~~XXXVIII.~~  
~~R. 1, 2.~~

How orders  
enforced  
against third  
parties.

22. No proceeding by audita querela shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

Audita  
querela  
abolished.

23. Nothing in any of the rules of this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

Saving  
clauses.

24. Nothing in this order shall affect the order in which writs of execution may be issued.

## ORDER XXXVIII.

### *Writs of Fieri Facias and Elegit.*

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

Fi. fa. and  
elegit.

2. Writs of venditioni exponas, distringas nuper vice comitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

Writs in aid.

O XXXIX

R. 1, 2.

O. XL.

R. 1, 2.

Effect of  
writ.Leave  
necessary.

## ORDER XXXIX.

*Attachment.*

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court of Chancery has heretofore had.
2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

## ORDER XL.

*Attachment of Debts.*Application  
for order to  
examine  
judgment  
debtor.Order to  
attach.Order to  
garnishee to  
appear.

1. Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.
2. The Court or a Judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (herein-after called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.



3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge shall direct, shall bind such debts in his hands.

O. XL.  
R. 3-7.

Debts attached in garnishee's hands.

4. If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

Order for execution against garnishee.

5. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

Order where garnishee disputes liability.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Order for third party to appear if interest suggested.

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person, or make

Order concerning third parties.

**O. XI.** such other order as such Court or Judge shall think  
**R. 7-10.** fit, upon such terms, in all cases, with respect to  
**O. XLI.** the lien or charge (if any) of such third person, and  
**R. 1, 2.** to costs, as the Court or Judge shall think just and reasonable.

**Discharge of garnishee.** 8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

**Debt attachment book.** 9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

**Costs.** 10. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

## ORDER XLI.

### *Charging of Stock or Shares and Distringas.*

**Charging stock.** 1. An order charging stock or shares may be made by any divisional Court or by any Judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 and 2 Vict. c. 110. ss. 14 and 15., and 3 and 4 Vict. c. 82. s. 1.

**Distringas.** 2. Any person claiming to be interested in any stock transferable at the Bank of England standing in the name of any other person may sue out a writ of distringas pursuant to the statute 5 Vict. c. 8, as heretofore. Such writ to be issued out of any office of the High Court in London, where writs of summons are issued.

## ORDER XLII.

*Writ of Sequestration.*

Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

O. XLII.  
O. XLIII.  
R. 1 2.  
O. XLIV.

Writ how  
issued  
effect.

## ORDER XLIII.

*Writ of Possession.*

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law.

Mode of  
recovering  
possession of  
land.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment and that the same has not been obeyed.

Writ of  
possession,  
how issued  
and by  
whom.

## ORDER XLIV.

*Writ of Delivery.*

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law.

Manner of  
issuing.

O. XLV.  
R. 1-3.

## ORDER XLV.

*Change of Parties by Death, &c.*

Order on  
change of  
parties,  
when and  
how  
obtained.

1. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained ex parte on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

Service of  
order on  
whom and  
effect.

2. An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

Application  
to discharge  
or vary  
where  
persons  
under no  
disability.

3. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the action, shall be served with such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof.

4. Where any person being under any disability other than coverture, and not having had a guardian ad litem appointed in the action is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians ad litem for such party, and until such period of twelve days shall have expired, such order shall have no force or effect as against such last-mentioned person.

O. XLV.  
R. 4.  
O. XLVI.  
R. 1-4.  
O. XLVII.  
R. 1.

Such application where person under disability.

### ORDER XLVI.

#### *Transfers and Consolidation.*

1. Any action or actions may be transferred from one division to another of the High Court or from one Judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the President of the Division.
2. Any action may, at any stage be transferred from one division to another by an order made by the Court or any Judge of the Division to which the action is assigned: Provided that no such transfer shall be made without the consent of the President of the Division to which the action is proposed to be transferred.
3. Any action transferred to the Chancery Division or the Probate Division, shall, by the order directing the transfer, be directed to be assigned to one of the Judges of such Division to be named in the order.
4. Actions in any division or divisions may be consolidated by order of the Court or a Judge in the manner heretofore in use in the Superior Courts of Common Law.

When and how transfer from division and from judge.

Order to transfer from division

Transfer to Chancery Division or Probate Division.

Consolidation.

### ORDER XLVII.

#### *Interlocutory Orders as to Mandamus Injunctions or Interim Preservation of Property, &c.*

1. An application for an order under section 25, sub-section 8, of the Act, or under Rules 44 or 45

Application for order under s. 25, and R.P. 44 and 45.

O. XLVII.  
R. 1-3.  
O. XLVIII.  
R. 1.

Application  
for order  
under  
R.P. 43.

Order to pay  
into court  
specific prop-  
erty on  
which lien  
claimed.

of the Schedule to the Act may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said subsection 8 it may be made either ex parte or with notice, and if for an order under the said section 44 or 45 it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party then on notice to the plaintiff, and at any time after appearance by the party making the application.

2. An application for an order under Rule 43 of the Schedule to the Act may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

3. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

#### ORDER XLVIII.

#### *Motions and other Applications.*

Applications  
to Divisional  
Court or to

1. Where by these rules any application is authorised to be made to the Court or a Judge in

an action, such application, if made to a Divisional Court or to a Judge in Court, shall be made by motion.

2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorised by these rules.

3. Except where by the practice existing at the time of the passing of the said Act any order or rule has heretofore been made ex parte absolute in the first instance, and except where by these rules it is otherwise provided, no motion shall be made without previous notice to the parties affected thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

4. Unless the Court or Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

5. If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ

O XLVIII  
R. 1-7.

Judge in Court, to be by motion.

No order to show cause except those provided by R.C.

When motion may be made without previous notice.

Length of notice.

Order where notice has not been given.

Adjournment.

On whom notice of motion may be served without leave.

**O XLVIII** of summons to appear in the action, has not ap-  
**R. 7, 8.** appeared within the time limited for that purpose.  
**O XLIX.**

**R. 1, 2.** 8. The plaintiff may, by leave of the Court or a  
 Judge to be obtained *ex parte*, serve any notice of  
 motion upon any defendant along with the writ of  
 summons, or at any time after service of the writ of  
 summons and before the time limited for the ap-  
 pearance of such defendant.

## ORDER XLIX.

### *Applications at Chambers.*

**How made.**

1. Every application at chambers authorised by these rules shall be made in a summary way by summons.

**Who may transact business and what.**

2. In the Queen's Bench, Common Pleas, and Exchequer Divisions a master, and in the Probate, Divorce, and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the Act, or the Schedule thereto, or these rules, may be transacted or exercised by a Judge at chambers, except in respect of the following proceedings and matters; that is to say,—

All matters relating to criminal proceedings or to the liberty of the subject :

The removal of actions from one division or Judge to another division or Judge :

The settlement of issues, except by consent :

Discovery, whether of documents or otherwise, and inspection, except by consent :

Appeals from district registrars :

Interpleader other than such matters arising in interpleader as relate to practice only, except by consent :

Prohibitions :

Injunctions and other orders under sub-section 8 of section 25 of the Act, or under Rules 43, 44, and 45 respectively of the Schedule to the Act :

Awarding of costs, other than the costs of any proceeding before such master :



Reviewing taxation of costs :

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof :

O. XLIX.  
R. 2-8.  
O. L.  
R. 1-3.

Acknowledgments of married women.

3. If any matter appears to the master proper for the decision of a Judge the master may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the master with such directions as he may think fit. Reference to judge.

4. Any person affected by any order or decision of a master may appeal therefrom to a Judge at Chambers. Such appeal shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a Judge or master. Appeal from master to judge by summons.

5. An appeal from a master's decision shall be no stay of proceeding unless so ordered by a Judge or master. Appeal no stay.

6. In the Queen's Bench, Common Pleas, and Exchequer Division every appeal to the Court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against. Appeal from chambers to court by motion.

## ORDER L.

### *Notices and Paper, &c.*

1. All notices required by these rules shall be in writing, unless expressly authorised by a Court or Judge to be given orally. Notices to be in writing.

2. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide. Paper and type of printed proceedings.

3. Where by the Act or these rules, or by any order of the Court (whether of appeal or otherwise) or a Judge, any pleading or evidence or other document is ordered to be printed by any party, such party shall, upon request and upon payment therefor at the rate of halfpenny per folio of 72 10 copies of printed proceedings to be delivered at 1d. per folio.

O. L.  
R. 9-10.  
O. L.L.  
R. 1.

Swearing  
affidavits.

When  
affidavits  
filed under  
consent  
to be printed  
under  
direction of  
officer.

When other  
affidavits to  
be printed.

Fair copy of  
affidavit on  
filing.

Office copies  
of filed  
affidavits.

Office copy  
to be a  
printed  
copy.

Printed  
office copy  
to be taken  
by person  
filing at 2d.  
per folio.

Other copies  
at 1d. per  
folio.

words, deliver any number of copies not exceeding 10 to any party.

4. Any affidavit may be sworn, either in print or in manuscript.

5. Every affidavit filed under a consent to take the evidence in an action by affidavit, shall, unless the Court or a Judge shall otherwise order, be printed under the direction of the officer with whom it is filed, in the same manner in which affidavits have heretofore been printed under the direction of the record and writ clerks in the Court of Chancery.

6. Any affidavit other than those mentioned in the last Rule may be printed in manner thereby provided, if all the parties interested consent thereto, or the Court or a Judge so order.

7. The party filing an affidavit required or ordered to be printed, shall leave with the officer with whom it is filed a fair copy thereof, such copy to be written on draft paper on one side only.

8. Any party requiring a copy of any affidavit filed by any other party shall take an office copy.

9. An office copy of any affidavit required or ordered to be printed under these rules shall be a printed copy.

10. The party filing any affidavit required or ordered to be printed shall take a printed office copy, paying therefor at the rate of twopence per folio.

Every other printed office copy shall be paid for at the rate of one penny per folio.

## ORDER LI.

### *Time.*

Months to  
mean  
calendar  
months.

1. Where by these rules, or by any judgment or order given or made after the commencement of the Act, time for doing any Act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

O. L.I.  
R. 2-3  
O. L.II  
R. 1, 2.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

When Sunday, Christmas Day, and Good Friday, not to be reckoned.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a Judge.

Provision as to acts to be done while offices closed.

No pleadings during long vacation.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by a Court or a Judge.

Long vacation not to be reckoned in time for pleadings.

6. A Court or a Judge shall have power to enlarge or abridge the time appointed by these rules; or fixed by any order enlarging time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Power to abridge or enlarge time.

## ORDER LII.

### *Appeals.*

1. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days notice, and notice of appeal from any interlocutory order shall be a four days notice.

Length of notice.

2. Subject to any special order which may be made, notice by a respondent under section 53 of the schedule shall in the case of any appeal from a

Length of notice under R. P. 53.

O. LII.  
R. 2—6.

final judgment be an eight days notice, and in the case of an appeal from an interlocutory order a two days notice.

Proceedings  
on entering  
appeal.

3. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

Time for  
appeal in  
companies  
bankruptcy  
and matters  
not an  
action.

4. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under rule 57 in the schedule to the said Act.

Appeal from  
refusal of  
court to ex  
parte appli-  
cation.

5. Where an ex parte application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Appeal Court may allow.

Evidence in  
appeal.

6. Where any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order to be made under section 54 of the schedule to the Act, be brought before the Court of Appeal as follows :

(a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(b.) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

O. LII.  
R. 6-9.  
O. LIII.  
O. LIV.  
R. 1.

7. Where evidence has not been printed in the Court below the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a Judge thereof shall otherwise order.

Order to  
print  
evidence in  
court below.

8. Wherever under these rules or under the schedule to the Act an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below, or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.

Where  
application  
first to be  
made to  
court or  
Judge below.

9. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order 48 shall apply thereto.

Applications  
in court of  
appeal.

### ORDER LIII.

#### *Effect of Non-compliance.*

Non-compliance with any of these rules shall not render the proceedings in any action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

Not to  
render  
proceedings  
void.

### ORDER LIV.

#### *Officers.*

1. All officers who at the time of the commencement of the said Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of

Allocation  
of former  
officers.

O. LII.  
R. 2-6.

Proceedings  
on entering  
appeal.

final judgment be an eight days notice, and in the case of an appeal from an interlocutory order a two days notice.

3. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

Time for  
appeal in  
companies  
bankruptcy  
and matters  
not an  
action.

4. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under rule 57 in the schedule to the said Act.

Appeal from  
refusal of  
court to ex  
parte appli-  
cation.

5. Where an ex parte application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Appeal Court may allow.

Evidence in  
appeal.

6. Where any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order to be made under section 54 of the schedule to the Act, be brought before the Court of Appeal as follows :

(a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(b.) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

O. LII.  
R. 6-9.  
O. LIII.  
O. LIV.  
R. 1.

7. Where evidence has not been printed in the Court below the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a Judge thereof shall otherwise order.

Order to  
print  
evidence in  
court below.

8. Wherever under these rules or under the schedule to the Act an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below, or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.

Where  
application  
first to be  
made to  
court or  
Judge below.

9. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order 48 shall apply thereto.

Applications  
in court of  
appeal.

### ORDER LIII.

#### *Effect of Non-compliance.*

Non-compliance with any of these rules shall not render the proceedings in any action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

Not to  
render  
proceedings  
void.

### ORDER LIV.

#### *Officers.*

1. All officers who at the time of the commencement of the said Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court ; and all officers who at the time of the commencement of the said Act shall be attached to the Court of

Allocation  
of former  
officers.

O. LIV.  
R. 1. 2.  
O. LV.  
R. 1.

Allocation  
of former  
officers.

Queen's Bench shall be attached the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Exchequer and the London Court of Bankruptcy shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Probate, the Court of Divorce, and the Court of Admiralty respectively shall be attached to the Probate, Divorce, and Admiralty Division of the said High Court.

Duties of  
officers of  
Court of  
Appeal.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to re-hearings in the Court of Appeal in Chancery, and as the Masters and officers of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

## ORDER LV.

### *Sittings and Vacations.*

Sittings.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whitsunday.



The Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August. O. LV.  
R. 1-6

2. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation. Vacations.

The Long vacation shall commence on the 10th of August and terminate on the 24th of October. The Christmas vacation shall commence on the 24th of December and terminate on the 6th of January.

The Easter vacation shall commence on Good Friday and terminate on Easter Monday, and the Whitsun vacation shall commence on the Saturday before Whitsunday and shall terminate on the Tuesday after Whitsunday.

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Monday, and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving. Offices when  
open and  
when closed.

5. Two of the Judges of the High Court shall be selected at the commencement of each long vacation for the hearing in London or Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two Judges shall act as vacation Judges for one year from their appointment. In the absence of arrangement between the Judges, the two vacation Judges shall be the two Judges last appointed (whether as Judges of the said High Court or of any Court whose jurisdiction is by the said Act transferred to the said High Court) who have not already served as vacation Judges of any such The two  
vacation  
judges.

O. LV.  
R. 5-9.

Court, and if there shall not be two Judges for the time being of the said High Court who shall not have so served, then the two vacation Judges shall be the Judge (if any) who has not so served and the senior Judge or Judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation Judge.

Vacation  
Judges may  
sit separately  
or together.

6. The vacation Judges may sit either separately or together as a divisional Court as occasion shall require, and may hear and dispose of all actions, matters, and other business to whichever division the same may be assigned. No order made by a vacation Judge shall be reversed or varied except by a divisional Court or the Court of Appeal, or a Judge thereof, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any vacation Judge.

Vacation  
Judge of  
Court of  
Appeal.

7. One of the ordinary judges of the Court of Appeal shall be selected at the commencement of each long vacation, for the hearing in London or Middlesex of all such applications as may require to be immediately or promptly heard. Such Judge shall act as vacation Judge for one year from his appointment. In the absence of arrangement between the Judges, the Judge who is junior in rank who has not already served as vacation Judge of the Court of Appeal shall be the vacation Judge, and if there shall be no such Judge then the senior ordinary Judge who has so served once only according to seniority of rank.

Powers of  
vacation  
Judge of  
Court of  
Appeal,

8. The vacation Judge of the Court of Appeal may discharge or vary any order made by a single vacation Judge of the High Court, but every such order made by a vacation Judge of the Court of Appeal may be discharged or varied by the Court of Appeal or a Divisional Court thereof; any other Judge of the Court of Appeal may sit in vacation for the vacation Judge.

and of  
vacation  
Judge.

9. The vacation Judges of the High Court, or

Court of Appeal respectively, may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, or of the Court of Appeal, as the case may be, although such interval may not be called or known as a vacation.

O. LV.  
R. 9.  
O. LVI.  
O. LVII.

## ORDER LVI.

*Exceptions from the Rules.*

Nothing in these rules shall affect the practice or procedure in any of the following causes or matters :—

Exceptions  
from rules.

Criminal proceedings:

Proceedings on the Court side of the Queen's Bench Division :

Proceedings on the Revenue side of the Exchequer Division :

Proceedings for Divorce or other Matrimonial Causes.

## ORDER LVII.

*Interpretation of Terms.*

In the construction of these rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following :—

Interpre-  
tation of  
terms.

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular :

Words importing the male sex shall include females :

"Person" shall include a body corporate or politic :

"Probate actions" shall include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business :

O. LVII.  
Proper  
officer.

“Proper officer” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows :—

(a.) Where any duty to be discharged under the Act or these rules is a duty which has heretofore been discharged by an officer, such officer shall continue to be the proper officer to discharge the same :

(b.) Where any new duty is under the Act or these rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division by the President of the division, and in the case of an officer attached to any Judge, by such Judge :

“The Act” and “The said Act” shall respectively mean the Supreme Court of Judicature Act, 1873.

# SCHEDULE.

## SCHEDULE (A).—PART I.—Forms of Writs of Summons, &c.

### No. 1.—General Form.

187 . [Here put the letter and number.]  
 In the High Court of Justice. Between A.B. Plaintiff,  
 Division. and  
 C.D. and E.F. Defendants.

VICTORIA, by the grace of God, &c.  
 in the county of and E.F. of  
 To C.D. of  
 We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of Our High Court of Justice in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within (twelve) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant [or defendants] may appear hereto by entering an appearance [or appearances] either personally or by solicitor at the [ ] office at

*Indorsements to be made on the writ before issue thereof,*

The plaintiff's claim is for, &c.

This writ was issued by E.F., of solicitor for the said plaintiff, who resides at , or, this writ was issued by the plaintiff in person who resides at [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

*Indorsement to be made on the writ after service thereof.*

This writ was served by X.Y. on L.M. [the defendant or one of the defendants], on Monday, the day of 18 .  
 (Signed) X.Y.

### No. 2.—Writ for service out of the jurisdiction, or where notice in lieu of service is to be given out of the jurisdiction.

187 . [Here put the letter and number.]  
 In the High Court of Justice. Between A.B. Plaintiff,  
 Division. and  
 C.D. and E.F. Defendants.

VICTORIA, by the grace of God, &c.

To C.D. of

We command you C.D., That within [here insert the number of days directed by the Court or Judge ordering the service or notice] after the service of this writ, [or notice of this writ, as the case may be] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the division of Our High Court of Justice in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may, by leave of the Court or a Judge, proceed therein, and judgment may be given in your absence. Witness, &c.

*Memoranda and Indorsements as in Form No. 1*

*Indorsement to be made on the writ before the issue thereof.*

N.B.—This writ is to be used where the Defendant or all the Defendants or one or more Defendant or Defendants is or are out of the jurisdiction.

**No. 3.—Notice of Writ in lieu of service to be given out of the jurisdiction.**

187 . [*Here put the letter and number.*]

Between A.B. Plaintiff.

C.D., E.F., and G.H. Defendants.

To G.H., of

Take notice, that A.B., of division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the day of A.D. 18 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action ; and in default of your so doing, the said A.B. may, by leave of the Court or a Judge, proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [ ] office at

(Signed) A.B. of or &c.

XY. of &c.  
Solicitor for A.B.

In the High Court of Justice.  
Division.

**No. 4.—Writ in Admiralty action in rem.**

187 . [*Here put the letter and number.*]

In the High Court of Justice.  
Admiralty Division.

Between A.B., plaintiff,  
and  
Owners.

VICTORIA, &c.

To the owners and parties interested in the ship or vessel [*Mary*][*or cargo, &c., as the case may be*] of the port of

We hereby authorize officer of Our Supreme Court, and all and singular his substitutes, to arrest the ship or vessel [*Mary*], of the port of and the cargo laden therein [*or cargo, &c., as the case may be*], and to keep the same under safe arrest until he shall receive further orders from Us. And We command you, the owners and other parties interested in the said ship and cargo [*or cargo, &c., as the case may be*] that within eight days after the arrest of the said vessel [*or cargo, &c., as the case may be*] you do cause an appearance to be entered for you in the Admiralty Division of Our High Court of Justice in an action at the suit of A.B. ; and take notice that in default of your so doing Our said Court will proceed to hear the said action and to pronounce judgment therein, your absence notwithstanding.

**No. 5.—Form of Memorandum for Renewed Writ.**

In the High Court of Justice.  
Division.

Between A.B., plaintiff,  
and  
C.D., defendant.

Seal renewed writ of summons in this action indorsed as follows: —  
[*Copy original writ any the indorsements.*]

**No. 6.—Memorandum of Appearance.**187. [*Here put the letter and number.*]High Court of Justice.  
[Chancery] Division.*A.B.*, v. *C.D.*, and others.Enter an appearance for  
in this action.

Dated this            day of

*X.Y.*,  
Solicitor for the Defendant.The place of business of *X.Y.* is  
His address for service isor [*C.D.*,  
Defendant in person.The address of *C.D.* is

His address for service is

The said defendant [requires, or, does not require] a statement of complaint to  
be filed and delivered.**No. 7.—Notice.—Limitation of defence.**[*Here put the letter and number.*]

In the High Court of Justice.

Queen's Bench (or Chancery, C.P., or, &amp;c.) Division.

Between *A.B.*, plaintiff,

and

*C.D.*, and*E.F.*, defendants.The defendant *C.D.* limits his defence to part only of the property mentioned  
in the writ in this action, that is to say, to the close called "the Big field."

Yours, &amp;c.,

*G.H.*,Solicitor for the said defendant *C.D.*To Mr. *X.Y.*, plaintiff's solicitor.**SCHEDULE (A.)—PART II.—SECTION I.—GENERAL  
INDORSEMENTS.—In Matters assigned by the 34th Section  
of the Act to the Chancery Division.****No. 1.—Creditor to administer Estate.**The plaintiff's claim is as a creditor of *X.Y.*, of            deceased, to  
have the [real and] personal estate of the said *X.Y.* administered. The defendant  
*C.D.* is sued as the administrator of the said *X.Y.* [and the defendants *E.F.* and  
*G.H.* as his co-heirs-at-law].**No. 2.—Legatee to administer Estate.**The plaintiff's claim is as a legatee under the will dated the            day of  
18    of *X.Y.* deceased, to have the [real and] personal estate of the said  
*X.Y.* administered. The defendant *C.D.* is sued as the executor of the said *X.Y.*  
[and the defendants *E.F.* and *G.H.* as his devisees].**No. 3.—Partnership.**The plaintiff's claim is to have an account taken of the partnership dealings  
between the plaintiff and defendant [under articles of partnership dated the  
day of            ], and to have the affairs of the partnership wound up.**No. 4.—By Mortgagees.**The plaintiff's claim is to have an account taken of what is due to him for  
principal, interest, and costs on a mortgage dated the            day of  
made between            [or by deposit of title deeds], and that the  
mortgage may be enforced by foreclosure or sale.

**No. 5.—By Mortgagor.**

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated \_\_\_\_\_ and made between [parties] and to redeem the property comprised therein.

**No. 6.—Raising Portions.**

The plaintiff's claim is that the sum of £ \_\_\_\_\_, which by an indenture of settlement dated \_\_\_\_\_, was provided for the portions of the younger children of \_\_\_\_\_ may be raised.

**No. 7.—Execution of Trusts.**

The plaintiff's claim is to have the trusts of an indenture dated \_\_\_\_\_ and made between \_\_\_\_\_, carried into execution.

**No. 8.—Cancellation or Rectification**

The plaintiff's claim is to have a deed dated \_\_\_\_\_ and made between [parties], set aside or rectified.

**No. 9.—Specific Performance.**

The plaintiff's claim is for specific performance of an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at \_\_\_\_\_

**SCHEDULE (A.)—PART II.—SECTION II.—Money Claims**  
where no Special Indorsement under Rule 7 in Schedule to Act.

**No. 1.—Goods sold.**

The plaintiff's claim is £ \_\_\_\_\_ for the price of goods sold.  
[This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.]

**No. 2.—Money lent.**

The plaintiff's claim is £ \_\_\_\_\_ for money lent [and in'eres'.]

**No. 3.—Several demands.**

The plaintiff's claim is £ \_\_\_\_\_; whereof £ \_\_\_\_\_ is for the price of goods sold, and £ \_\_\_\_\_ for money lent, and £ \_\_\_\_\_ for interest.

**No. 4.—Rent.**

The plaintiff's claim is £ \_\_\_\_\_ for arrears of rent.

**No. 5.—Salary, &c.**

The plaintiff's claim is £ \_\_\_\_\_ for arrears of salary as a clerk [or as the case may be.]

**No. 6.—Interest.**

The plaintiff's claim is £ \_\_\_\_\_ for interest upon money lent.

**No. 7.—General average.**

The plaintiff's claim is £ \_\_\_\_\_ for a general average contribution.

**No. 8.—Freight, &c.**

The plaintiff's claim is £ \_\_\_\_\_ for freight and demurrage.  
The plaintiff's claim is £ \_\_\_\_\_ for lighterage.

**No. 9.—Tolls.**

The plaintiff's claim is £ \_\_\_\_\_ for market tolls and stallage.



**No. 10.—Penalties.**

The plaintiff's claim is  
[ . . . . ]      £ for penalties under the Statute.

**No. 11.—Bankers balance.**

The plaintiff's claim is  
a banker.      £ for money deposited with the defendant as

**No. 12.—Fees, &c., as solicitors.**

The plaintiff's claim is  
money expended] as a solicitor.      £ for fees for work done [and      £

**No. 13.—Commission.**

The plaintiff's claim is  
as auctioneer, cotton broker, &c.]      £ for commission earned as [state character

**No. 14.—Medical attendance, &c.**

The plaintiff's claim is      £ for medical attendances.

**No. 15.—Return of premium.**

The plaintiff's claim is      £ for a return of premiums paid upon policies  
of insurance.

**No. 16.—Warehouse rent.**

The plaintiff's claim is      £ for the warehousing of goods.

**No. 17.—Carriage of goods.**

The plaintiff's claim is      £ for the carriage of goods by railway.

**No. 18.—Use and occupation of houses**

The plaintiff's claim is      £ for the use and occupation of a house.

**No. 19.—Hire of goods**

The plaintiff's claim is      £ for the hire of [furniture].

**No. 20.—Work done.**

The plaintiff's claim is      £ for work done as a surveyor.

**No. 21.—Board and lodging.**

The plaintiff's claim is      £ for board and lodging.

**No. 22.—Schooling**

The plaintiff's claim is      £ for the board, lodging, and tuition of *X.Y.*

**No. 23.—Money received.**

The plaintiff's claim is      £ for money received by the defendant as  
solicitor [or factor, or collector, or, &c.] of the plaintiff.

**No. 24.—Fees of office.**

The plaintiff's claim is      £ for fees received by the defendant under  
colour of the office of

**No. 25.—Money overpaid.**

The plaintiff's claim is      £ for a return of money overcharged for  
the carriage of goods by railway.

The plaintiff's claim is      £ for a return of fees overcharged by the  
defendant as

**No. 26.—Return of money by stakeholder.**

The plaintiff's claim is      £ for a return of money deposited with the  
defendant as stakeholder.

**No. 27.—Money won, from stakeholder.**

The plaintiff's claim is      £ for money entrusted to the defendant as  
stakeholder and become payable to plaintiff.

**No. 28.—Money entrusted to agent.**

The plaintiff's claim is *l.* for a return of money entrusted to the defendant as agent of the plaintiff.

**No. 29.—Money obtained by fraud.**

The plaintiff's claim is *l.* for a return of money obtained from the plaintiff by fraud.

**No. 30.—Money paid by mistake.**

The plaintiff's claim is *l.* for a return of money paid to the defendant by mistake.

**No. 31.—Money paid for consideration which has failed.**

The plaintiff's claim is *l.* for a return of money paid to the defendant for [work to be done, left undone ; or, a bill to be taken up ; not taken up, or &c.]  
The plaintiff's claim is *l.* for a return of money paid as a deposit upon shares to be allotted.

**No. 32.—Money paid by surety for defendant.**

The plaintiff's claim is *l.* for money paid for the defendant as his surety.

**No. 33.—Rent paid.**

The plaintiff's claim is *l.* for money paid for rent due by the defendant.

**No. 34.—Money paid on accommodation bill.**

The plaintiff's claim is *l.* upon a bill of exchange accepted [or indorsed] for the defendant's accommodation.

**No. 35.—Contribution by surety.**

The plaintiff's claim is *l.* for a contribution in respect of money paid by the plaintiff as surety.

**Note 36.—By co-debtor.**

The plaintiff's claim is *l.* for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.

**Note 37.—Money paid for calls.**

The plaintiff's claim is *l.* for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.

**Note 38.—Money payable under award.**

The plaintiff's claim is *l.* for money payable under an award.

**No. 39.—Life policy.**

The plaintiff's claim is *l.* upon a policy of insurance upon the life of X.Y., deceased.

**No. 40.—Money bond.**

The plaintiff's claim is *l.* upon a bond to secure payment of £1,000, and interest.

**No. 41.—Foreign judgment.**

The plaintiff's claim is *l.* upon a judgment of the Court, in the Empire of Russia.

**No. 42.—Bills of exchange &c.**

The plaintiff's claim is *l.* upon a cheque drawn by the defendant.  
The plaintiff's claim is *l.* upon a bill of exchange accepted (or drawn or indorsed) by the defendant.  
The plaintiff's claim is *l.* upon a promissory note made (or indorsed) by the defendant.  
The plaintiff's claim is *l.* against the defendant A.B. as acceptor, and against the defendant C.D. as drawer (or indorser) of a bill of exchange.

**No. 43.—Surety.**

The plaintiff's claim is  
price of goods sold. *l.* against the defendant as surety for the

The plaintiff's claim is *l.* against the defendant *A.B.* as principal,  
and against the defendant *C.D.* as surety, for the price of goods sold (*or arrears  
of rent, or for money lent, or for money received by the defendant A.B. as  
traveller for the plaintiffs, or, &c.*)

**No. 44.—Del credere agent.**

The plaintiff's claim is *l.* against the defendant as a *del credere*  
agent for the price of goods sold (*or as losses under a policy*).

**No. 45.—Calls.**

The plaintiff's claim is *l.* for calls upon shares.

**No. 46.—Waygoing crops, &c.**

The plaintiff's claim is *l.* for crops, tillage, manures [*or as the case  
may be*] left by the defendant as outgoing tenant of a farm.

**SCHEDULE (A.)—PART II.—SECTION III.—Indorsement  
for Costs, &c. [add to the above Forms].**

And *l.* for costs; and if the amount claimed be paid to the  
plaintiff or his solicitor within four days [*or if the writ is to be served out of the  
jurisdiction, or notice in lieu of service allowed, insert the time for appearance  
limited by the order*] from the service hereof, further proceedings will be stayed.

**SCHEDULE (A.)—PART II.—SECTION IV.—Damages and  
other Claims.**

**No. 1.—Agent, &c.**

The plaintiff's claim is for damages for breach of a contract to employ the  
plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defend-  
ant's employment as traveller (*and l. for arrears of wages*).

The plaintiff's claim is for damages for the defendant's wrongfully quitting  
the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor (*or &c.*) of  
the plaintiff (*and l. for money received as factor, &c.*)

**No. 2.—Apprentices.**

The plaintiff's claim is for damages for breach of the terms of a deed of  
apprenticeship of *X.Y.* to the defendant (*or plaintiff*).

**No. 3.—Arbitration.**

The plaintiff's claim is for damages for non-compliance with the award of *X.Y.*

**No. 4.—Assault, &c.**

The plaintiff's claim is for damages for assault (*and false imprisonment, and for  
malicious prosecution*).

**No. 5.—By husband and wife.**

The plaintiff's claim is for damages for assault and false imprisonment of the  
plaintiff *C.D.*

**No. 6.—Against husband and wife.**

The plaintiff's claim is for damages for assault by the defendant *C.D.*

**No. 7.—Solicitor.**

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.

**No. 8.—Bailment.**

The plaintiff's claim is for damages for negligence in the custody of goods (*and for wrongfully detaining the same*).

**No. 9.—Pledge.**

The plaintiff's claim is for damages for negligence in the keeping of goods pawned (*and for wrongfully detaining the same*).

**No. 10.—Hire.**

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire (*or a carriage lent*), (*and for wrongfully, &c.*)

**No. 11.—Banker.**

The plaintiff's claim is for damages for wrongfully neglecting (*or refusing*) to pay the plaintiff's cheque.

**No. 12.—Bill.**

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

**No. 13.—Bond.**

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a

**No. 14.—Carrier.**

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

**No. 15.—Charter-party.**

The plaintiff's claim is for damages for breach of charter-party of ship (*Mary*).

**No. 16.—Claim for return of goods; damages.**

The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same.

**No. 17.—Damages for depriving of goods.**

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

**No. 18.—Defamation.**

The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

**No. 19.—Distress—Replevin.**

The plaintiff's claim is in replevin for goods wrongfully distrained.

**No. 20.—Wrongful distress.**

The plaintiff's claim is for damages for improperly distraining.

(*This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*)

**No. 21.—Ejectment.**

The plaintiff's claim is to recover possession of a house, No.        in        street, or of a farm called Blackacre, situate in the parish of        in the county of

**No. 22.—To establish title and recover rents.**

The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof.

[*The two previous Forms may be combined.*]

**No. 23.—Dower.**

The plaintiff's claim is for dower.

**No. 24.—Fishery.**

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

**No. 25.—Fraud.**

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or, &c.*]

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A.B.*

**No. 26.—Guarantee.**

The plaintiff's claim is for damages for breach of a contract of guarantee for *A.B.*

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

**No. 27.—Insurance.**

The plaintiff's claim is for a loss under a policy upon the ship, "*Royal Charter*," and freight or cargo (*or for return of premiums.*)

(*This Form shall be sufficient whether the loss claimed be total or partial.*)

**No. 28.—Fire Insurance.**

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

**No. 29.—Landlord and Tenant.**

The plaintiff's claim is for damages for breach of contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

**No. 30.—Medical man.**

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

**No. 31.—Mischievous animal.**

The plaintiff's claim is for damages for injury by the defendant's dog.

**No. 32.—Negligence.**

The plaintiff's claim is for damages for injury to the plaintiff (*or, if by husband and wife, to the plaintiff, C.D.*) by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

**No. 33.—Lord Campbell's Act.**

The plaintiff's claim is as executor of *A.B.* deceased, for damages for the death of the said *A.B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

**No. 34.—Promise of marriage.**

The plaintiff's claim is for damages for breach of promise of marriage.

**No. 35.—Quare impedit.**

The plaintiff's claim is in quare impedit for

**No. 36.—Seduction.**

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

**No. 87.—Sale of goods.**

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [or short delivery, or defective quality, or other breach of contract of sale] of cotton [or, &c.]

The plaintiff's claim is for damages for breach of warranty of a horse.

**No. 88.—Sale of land.**

The plaintiff's claim is for damages for breach of a contract to sell (or purchase) land.

The plaintiff's claim is for damages for breach of a contract to let (or take) a house.

The plaintiff's claim is for damages for breach of a contract to sell (or purchase) the lease, with goodwill, fixtures, and stock in trade of a public house.

The plaintiff's claim is for damages for breach of covenant for title (or for quiet enjoyment, or, &c.) in a conveyance of land.

**No. 89.—Trespass to land.**

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well (or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river.)

**No. 40.—Support.**

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land (or house, or mine).

**No. 41.—Way.**

The plaintiff's claim is for damages for wrongfully obstructing a way (public highway or a private way).

**No. 42.—Watercourse &c.**

The plaintiff's claim is for damages for wrongfully diverting (or obstructing, or polluting, or diverting water from) a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land (or into the plaintiff's mine).

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

**No. 43.—Pasture.**

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

(This form shall be sufficient whatever the nature of the right to pasture be.)

**No. 44.—Light.**

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

**No. 45.—Sporting.**

The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting.

**No. 46.—Patent.**

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

**No. 47.—Copyright.**

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

**No. 48.—Trademark.**

The plaintiff's claim is for damages for wrongfully using (or imitating) the plaintiff's trade mark.

**No. 49.—Work.**

The plaintiff's claim is for damages for breach of a contract to build a ship (or to repair a house, &c.)

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

### No. 50.—Nuisance.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory (*or, &c.*)

The plaintiff's claim is for damages from nuisance by noise from the defendant's works (or stables, or, &c.)

**No. 51.—Innkeeper.**

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

**No. 52.—Mandamus.**

**Add to Indorsement :-**

And for a mandamus.

**No. 53.—Injunction.**

**Add to Indorsement :-**

And for an injunction.

*Add to indorsement where claim is to land, or to establish title, or both.*

**No. 54.—Mesne profits.**

And for mesne profits.

**No. 55.—Arrears of rent.**

And for an account of rents or arrears of rent.

**No. 56.—Breach of covenant.**

And for breach of covenant for [repairs].

**SCHEDULE (A.)—PART II.—SECTION V.—Probate.**

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the

day of \_\_\_\_\_ of C.W., late of \_\_\_\_\_

Gentleman, deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_

and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [or as the case may be].

2. By an executor or legatee of a former will, or a next of kin, &c., of the deceased seeking to obtain the revocation of a Probate granted in common form.

The plaintiff claims to be executor of the last will dated the

day of \_\_\_\_\_ of C.D., late of \_\_\_\_\_

Gentleman, deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_

and to have the probate of a pretended will of the

said deceased, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, hereby revoked.

This writ is issued against you as the executor of the said pretended will [or as the case may be].

3. By an executor or legatee of a will when letters of administration have been granted as in an intestacy.

The plaintiff claims to be executor of the last will of C.D., late of

Gentleman, deceased, who died on the

**day of** \_\_\_\_\_ **dated the**

day of

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.

The plaintiff claims to be the brother and sole next of kin of C.D. of

Gentleman, deceased, who died on the

day of                      intestate, and to have as such a grant of administration

to the personal estate of the said intestate. This writ is issued against you because

you have entered a caveat, and have alleged that you are the sole next of kin of the

deceased [or as the case may be],

## SCHEDULE (A).—PART II.—SECTION VI.—Admiralty.

1. *Damage to vessel by collision.*

The plaintiffs as owners of the vessel "Mary," of the port of \_\_\_\_\_, claim £1,000 against the brig or vessel "Jane" for damage occasioned by a collision, which took place in the North Sea in the month of May last.

2. *Damage to cargo by collision.*

The plaintiffs as owners of the cargo laden on board the vessel "Mary," of the port of \_\_\_\_\_, claim £ \_\_\_\_\_ against the vessel "Jane," for damage done to the said cargo in a collision in the North Sea in the month of May last.

[The two previous forms may be combined.]

3. *Damage to cargo otherwise.*

The plaintiff as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel £ \_\_\_\_\_ for damage done to the said goods during such voyage.

4. *In causes of possession.*

The plaintiff as sole owner of the vessel "Mary," of the port of \_\_\_\_\_, claims to have possession decreed to him of the said vessel.

5. The plaintiff claims possession of the vessel "Mary," of the port of \_\_\_\_\_ as owner of 49-64th shares of the said vessel against C.D. owner of 16-64th shares of the said vessel.

6. The plaintiff as part owner of the vessel "Mary," claims against C.D. part owner and his shares in the said vessel £ \_\_\_\_\_ as part of the earnings of the said vessel due to plaintiff.

7. The plaintiff as owner of 48-64th shares of the vessel "Mary," of the port of \_\_\_\_\_, claims possession of the said brig as against C.D. the master thereof.

8. The plaintiff under a mortgage, dated the \_\_\_\_\_ day of \_\_\_\_\_, claims against the vessel "Mary" £ \_\_\_\_\_, being the amount of his mortgage thereon, and £ \_\_\_\_\_ for interest.

9. The plaintiff as assignee of a bottomry bond, dated the \_\_\_\_\_ day of \_\_\_\_\_, and granted by C.D. as master of the vessel "Mary," of the port of \_\_\_\_\_, to A.B., at St. Thomas's, in the West Indies, claims £ \_\_\_\_\_ against the vessel "Mary" and the cargo laden thereon.

10. *By a part owner of a vessel.*

The plaintiff as owner of 24-64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ \_\_\_\_\_ for the value of the plaintiff's said shares in the said vessel.

11. The plaintiffs as owners of the derelict vessel "Mary," of the port of \_\_\_\_\_, claim to be put in possession of the said vessel and her cargo.

12. *By Salvors.*

The plaintiffs as the owners, master, and crew of the vessel "Caroline," of the port of \_\_\_\_\_, claim the sum of £ \_\_\_\_\_ for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the \_\_\_\_\_ day of \_\_\_\_\_.

13. *Claim for Towing.*

The plaintiffs as owners of the steam-tug "Jane," of the port of \_\_\_\_\_, claim £ \_\_\_\_\_ for towing services performed by the said steam-tug to the vessel "Mary," on the \_\_\_\_\_ day of \_\_\_\_\_.

14. *Seamen's Wages.*

The plaintiffs as seamen on board the vessel "Mary," claim £ \_\_\_\_\_ for wages due to them, as follows (1), the mate £30 for two months' wages from the \_\_\_\_\_ day of \_\_\_\_\_.

15. *For Necessaries.*

The plaintiffs claim £ \_\_\_\_\_ for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_.



# **SCHEDULE (A).—PART II.—SECTION VII.—Special Indorsements under Clause 7 of the Schedule.**

1. The plaintiff's claim is for the price of goods sold. The following are the particulars :—

1873—31st December.—

	£	s.	d.
Balance of account for butcher's meat to this date .....	35	10	0
1874—1st January to 31st March.—			
Butcher's meat supplied .....	74	5	0
	109	15	0
1874—1st February.—Paid .....	45	0	0
Balance due .....	£64	15	0

2. The plaintiff's claim is against the defendant *A.B.* as principal and against the defendant *C.D.* as surety, for the price of goods sold to *A.B.* The following are the particulars :—

1874—2nd February. Guarantee by *C.D.* of the price of woollen goods, to be supplied to *A.B.*

	£	s.	d.
2nd February—To goods .....	47	15	0
3rd March—To goods .....	105	14	0
17th March—To goods .....	14	12	0
5th April—To goods .....	34	0	0
	202	1	0

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars :—

Promissory note for £250, dated 1st January, 1874, made by defendant, payable four months after date.

	£
Principal .....	250
Interest .....	

4. The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer, of a bill of exchange. The following are the particulars :—

Bill of exchange for £500, dated 1st January 1874, drawn by defendant *C.D.* upon and accepted by defendant *A.B.*, payable three months after date.

	£
Principal .....	500
Interest .....	

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars :—

Bond dated 1st January 1873. Condition for payment of £100 on the 26th December 1873.

	£
Principal due .....	50
Interest .....	

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars :—

Deed dated ..... covenant to pay £100 and interest.

	£
Principal due .....	50
Interest .....	

# SCHEDULE (A).—PART II.—SECTION VIII.—Indorsements of Character of Parties.

## No. 1.—Executors.

The plaintiff's claim is as executor (*or administrator*) of *C.D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A.B.*, as executor (*or, &c.*) of *C.D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A.B.*, as executor of *X.Y.*, deceased, and against the defendant *C.D.*, in his personal capacity for, &c.

## No. 2.—By husband and wife, executrix.

The claim of the plaintiff *C.D.* is as executrix of *X.Y.*, deceased, and the claim of the plaintiff *A.B.* as her husband, for

## No. 3.—Against husband and wife, executrix.

The claim of the plaintiff is against the defendant *C.D.*, as executrix of the defendant *C.D.*, deceased, and against the defendant *A.B.* as her husband for

## No. 4.—Trustee in bankruptcy.

The plaintiff's claim is as trustee under the bankruptcy of *A.B.*, for

The plaintiff's claim is against the defendant as trustee under the bankruptcy of *A.B.*, for

## No. 5.—Trustees.

The plaintiff's claim is as (*or the plaintiff's claim is against the defendant as*) trustee under the will of *A.B.* (*or under the settlement upon the marriage of A.B. and X.Y., his wife*).

## No. 6.—Public officer.

The plaintiff's claim is as public officer of the Bank, for

The plaintiff's claim is against the defendant as public officer of the Bank, for

The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C.D.* as public officer of the Bank, as surety, for

## No. 7.—Heir and Devisee.

The plaintiff's claim is against the defendant as heir-at-law of *A.B.*, deceased.

The plaintiff's claim is against the defendant *C.D.* as heir-at-law, and against the defendant *E.F.* as devisee of lands under the will of *A.B.*

## No. 8.—Qui tam action.

The plaintiff's claim is as well for the Queen as for himself, for

# SCHEDULE (B).

## Form 1—Notice by Defendant to Third Party.

187 . [Here put the letter and number.]  
Notice filed , 187 .

In the High Court.  
Queen's Bench Division.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

To Mr. *X.Y.*

Take notice that this action has been brought by the plaintiff against the defendant [as surety for *M.N.*, upon a bond conditioned for payment of £2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of

one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, or, also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the                      day of                      , A.D.                      ).

Or (as acceptor of a bill of exchange for £500., dated the                      day of                      , A.D.                      , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or (to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant *C.D.* and yourself to dispute the validity of the judgment in this action whether obtained by consent or otherwise.

(Signed) *E.T.*

Or, *X.Y.*,  
Solicitor for the defendant,  
*E.T.*

Appearance to be entered at

#### Form 2.

187 . [Here put the letter and number.]

In the High Court,  
Queen's Bench Division.

Between *A.B.* plaintiff,  
and  
*C.D.*, defendant.

The plaintiff confesses the defence stated in the paragraph of the defendant's statement of defence [or, of the defendant's further statement of defence].

#### Form 3.

187 . [Here put the letter and number.]

In the High Court of Justice,  
Division.

Between *A.B.* plaintiff,  
and  
*C.D.*, defendant.

The particulars of the plaintiff's complaint herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

#### Form 4.

"To the within-named *X.Y.*

"Take notice that if you do not appear to the within counter-claim of the within-named *C.D.* within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

"Appearances are to be entered at

#### Form 5.—Notice of payment into court.

In the High Court of Justice,  
Q. B. Division,

1875. B. No.

*A. B. v. C. D.*

Take notice that the defendant has paid into Court £                      , and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.]

To Mr. *X. Y.*,  
the Plaintiff's Solicitor.

*Z.*,  
Defendant's Solicitor.

**Form 6.—Acceptance of sum paid into court.**

In the High Court of Justice.  
Q. B. Division.

1875. B. No.

*A. B. v. C. D.*

Take notice that the plaintiff accepts the sum of £ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

**Form 7.—Form of interrogatories.**

In the High Court of Justice  
Division.

1874. B. No.

Between *A. B.*, Plaintiff,  
and

*C. D., E. F., and G. H.*, Defendants.

Interrogatories filed on behalf of the above-named [ *plaintiff*, or defendant *C. D.* ] for the examination of the above-named [ *defendants E. F. and G. H.* or plaintiff ].

1. Did not, &c.

2. Has not, &c.

&c. &c. &c.

[ *The defendant E. F. is required to answer the interrogatories numbered .]*

[ *The defendant G. H. is required to answer the interrogatories numbered .]*

**Form 8.—Form of answer to interrogatories.**

In the High Court of Justice.  
Division.

1874. B. No.

Between *A. B.*, Plaintiff,  
and

*C. D., E. F., and G. H.*, Defendants.

The answer of the above-named defendant *E. F.* to the interrogatories filed for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows:—

.....

**Form 9.—Form of affidavit as to documents.**

In the High Court of Justice.  
Division.

1874. B. No.

Between *A. B.*, Plaintiff,  
and  
*C. D.*, Defendant.

I, the above-named defendant *C. D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first Schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first Schedule hereto.

3. That [ *here state upon what grounds the objection is made, and verify the facts as far as may be* ]

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second Schedule hereto.

5. The last-mentioned documents were last in my possession or power on [ *state when* ]

6. That [ *here state what has become of the last-mentioned documents, and in whose possession they now are.* ]

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of, or extract from any such document, or any other document whatsoever, relating to the

matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second Schedules hereto.

**Form 10.—Form of notice to produce documents.**

In the High Court of Justice.

Q. B. Division.

*A. B. v. C. D.*

Take notice that the [*plaintiff* or *defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or *deceit*, or *affidavit*, dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D.]  
Describe documents required.

X. Y.,

Solicitor to the

To Z.,  
Solicitor for

**Form 11.—Form of notice to inspect documents.**

In the High Court of Justice.

Q. B. Division.

*A. B. v. C. D.*

Take notice that you can inspect the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ A.D. [*except the deed numbered \_\_\_\_\_ in that notice*] at my office on Thursday next the \_\_\_\_\_ instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff* or *defendant*] objects to giving you inspection of the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ A.D., on the ground that [*state the ground*]:—

**Form 12.—Form of notice to admit documents.**

In the High Court of Justice.

Division.

*A. B. v. C. D.*

Take notice that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*] his solicitor or agent, at \_\_\_\_\_ on \_\_\_\_\_, between the hours of \_\_\_\_\_; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To E. F., solicitor [*or agent*] for defendant [*or plaintiff*].

G. H., solicitor [*or agent*] for plaintiff [*or defendant*].

[*Here describe the documents, the manner of doing which may be as follows:—*]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between A.B. and C.D. first part, and E.F. second part .....	January 1, 1848.
Indenture of lease from A.B. to C.D. ....	February 1, 1848.
Indenture of release between A.B., C.D. first part, &c. ....	February 2, 1848.
Letter, defendant to plaintiff. ....	March 1, 1848.
Policy of insurance on goods by ships "Isabella," on voyage from Oporto to London .....	December 3, 1847.
Memorandum of agreement between C.D., captain of said ship, and E.F. ....	January 1, 1848
Bill of exchange for £100 at three months, drawn by A.B. on and accepted by C.D. indorsed by E.F. and G.H. ....	May 1, 1849.

## COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of <i>A.B.</i> in the parish of <i>X.</i> .....	January 1, 1848 ....	Sent by General Post, February 2, 1848. Served March 2, 1848, on defendant's attorney by <i>E.F.</i> of _____
Letter—plaintiff to defendant .....	February 1, 1848 ..	
Notice to produce papers .....	March 1, 1848 .....	
Record of a Judgment of the Court of Queen's Bench in an action, <i>J.S. v. J.N.</i> .....	Trinity Term, 10th Vic.	
Letters Patent of King Charles II. in the Rolls Chapel .....	January 1, 1680.	

**Form 13.—Setting down special case.**

1875 B. No.

In the High Court of Justice.  
Division.Between *A. B.*, Plaintiff,

and

*C. D.* and others, Defendants.Set down for argument the special case filed in this action on the  
day of , 187 .*X. Y.*, solicitor for**Form 14.—Form of notice of trial.**In the High Court of Justice.  
Division.*A. B. v. C. D.*Take notice of trial of this action [*or of the issues in this action ordered to be tried*] by a judge and jury [*or as the case may be*] in Middlesex [*or as the case may be*] for the day of next.*X. Y.*, plaintiff's solicitor [*or as the case may be*].

Dated

To *Z.*, defendant's solicitor [*or as the case may be*].**SCHEDULE (C.)****No. 1.—Form of demurrer.**In the High Court of Justice.  
Division.*A. B. v. C. D.*The defendant [plaintiff] demurs to the [plaintiff's statement of complaint or defendant's statement of defence, or of set-off, or of counter-claim], [or to so much of the plaintiff's statement of complaint as claims . . . or as alleges as a breach of contract the matters mentioned in paragraph 17, or as the case may be] and says that the same is bad in law on the ground that [*here state a ground of demurrer*] and on other grounds, sufficient in law to sustain this demurrer.

No. 2.—Memorandum of entry of Demurrer for argument.

In the High Court of Justice.  
Division.

1874. B. No.

*A. B. v. C. D.*

to Enter for the argument the demurrer of

*X. Y.,*  
Solicitor for the plaintiff [or, &c.]

# THE SUPREME COURT OF JUDICATURE (commencement) ACT

1874.

*37 und 38 Vict., chap.*

11-3.

An Act for Delaying the coming into operation of the Supreme Court of Judicature Act, 1873.

[7th August, 1874.]

WHEREAS it is expedient to extend the time appointed for the commencement of the Supreme Court of Judicature Act, 1873 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Repeal of  
s. 2 of 36 and  
37 Vict.  
c. 66.

1. The second section of the Supreme Court of Judicature Act, 1873, is hereby repealed.

Commence-  
ment of  
Supreme  
Court of  
Judicature  
Act, 1873.

2. The Supreme Court of Judicature Act, 1873, except any provisions thereof directed to take effect on the passing of the said Act, shall commence and come into operation on the *first day of November one thousand eight hundred and seventy-five*, and the said first day of November one thousand eight hundred and seventy-five, shall be taken to be the time appointed for the commencement of the said Act.

Short title  
of Act.

3. This Act may be cited for all purposes as the Supreme Court of Judicature (Commencement) Act, 1874.



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The Reference simply to s. 43, or as the case may be, is to the Supreme Court of Judicature Act, 1873.

The Reference, "R. P.," is to the Rules of Procedure, forming the Schedule to the Supreme Court of Judicature Act, 1873.

The Reference, "O. 6, r. 2" is to Order VI., Rule 2, of the Rules of Court, issued by the Judges, and printed in this volume.

The following contractions are used, viz. :—

C. A. for Court of Appeal.	Ex. Div. for Exchequer Division.
C. B. for Chief Baron.	H. C. for High Court of Justice.
C. Div. for Chancery Division.	H. M. for Her Majesty.
Ch. for Chancery.	Ld. Ch. for Lord Chancellor.
Ct. for Court.	M. R. for Master of the Rolls.
Cts. for Courts.	O. for Order being the divisions of the Rules of Court.
Ct. Ch. for Court of Chancery.	P. C. for Privy Council or Privy Councillor.
C. J. for Chief Justice.	P. D. and A. Div. for Probate, Divorce, and Admiralty Division.
C. L. for Common Law.	Pl. for Plaintiff.
C. L. P. A., 1852, for Common Law Procedure Act, 1852.	Pls. for Plaintiffs.
C. L. P. A., 1854, for Common Law Procedure Act, 1854.	Q. B. for Court of Queen's Bench.
C. P. for Court of Common Pleas.	Q. B. Div. for Queen's Bench Division.
C. P. Div. for Common Pleas Division.	R. C. for Rules of Court.
D. C. for Divisional Court.	R. P. for Rules of Procedure.
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D. R. for District Registry.	p. for Page of this Volume.
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Defts. for Defendants.	
Div. for Division.	
Ex. for Court of Exchequer.	

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 Ct. may order affidavit of any witness, may be read at hearing or trial, on such conditions, any Ct. may think reasonable, R.P. 36, p. 76.  
 order not to be made for evidence by, if party bona fide desires production of witness for cross-examination, R.P. 36, p. 76.

**AFFIDAVIT—continued.**

any affidavit may be sworn either in print or in manuscript, O. 50, r. 4, p. 278.  
any affidavit may (if all the parties interested consent thereto, or the Ct. or judge so order) be printed under the direction of the officer, by whom it is filed in the same manner in which affidavits have heretofore been printed under the direction of the record and writ clerks in the Ct. Ch., O. 50, r. 5, p. 278.

a fair copy of affidavit required or ordered to be printed to be left by the party filing with the officer, with whom it is filed, O. 50, r. 7, p. 278.

such copy to be written on draft paper on one side only, O. 50, r. 7, p. 278.

any party requiring a copy of an affidavit filed by any other party shall take an office copy, O. 50, r. 8, p. 278.

office copy of any affidavit required or ordered to be printed under R.C. shall be a printed copy, O. 50, r. 9, p. 278.

the party filing any affidavit required or ordered to be printed shall take a printed office copy, O. 50, r. 10, p. 278.

he shall pay, therefore, at the rate of 2d. per folio, O. 50, r. 10, p. 278.

every other printed office copy shall be paid for at the rate of one penny per folio, O. 50, r. 10, p. 278.

**AFFIDAVITS, EVIDENCE BY (UNDER A CONSENT).**—See also Affidavit *supra*.

*Time for delivery of affidavits.*

pl. shall file his affidavits and deliver to the deft. or his solicitor a list thereof (a) within 14 days after a consent for taking evidence by affidavit as between pl. and deft. has been given, or (b) within such time as parties may agree upon, or (c) a judge in Chambers may allow, O. 33, r. 1, p. 257.

deft. shall file his affidavits and deliver to the pl. or his solicitor a list thereof (a) within 14 days after delivery of pl.'s list, or (b) within such time as the parties may agree upon, or (c) a judge in Chambers may allow, O. 33, r. 2, p. 257.

pl. shall file his affidavits in reply within seven days after the expiration of the 14 days, or such other time as shall be allowed deft. for filing his affidavits, O. 33, r. 3, p. 257.

such affidavits shall be confined to matters strictly in reply, O. 33, r. 3, p. 257.

pl. shall deliver to defendant or his solicitor a list of affidavits, O. 33, r. 3, p. 257.

such affidavits shall be printed, O. 33, r. 6, p. 258.

such affidavit shall (unless Ct. or judge otherwise order) be printed under the direction of the officer with whom it is filed, O. 50, r. 5, p. 278.

such affidavits to be printed in the same manner in which affidavits have heretofore been printed under the direction of the record and writ clerks in the Ct. Ch., O. 50, r. 5, p. 278.

notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by R.C., provided after the close of the pleadings, O. 38, r. 6, p. 258.—See Pleading.

*Cross-examination of deponents.*

a notice in writing may be served on party who has filed an affidavit requiring production of deponent for cross-examination before the Ct. at the trial, O. 33, r. 4, p. 257.

notice to be served (a) at any time before the expiration of 14 days next after the end of the time allowed for filing affidavits in reply, or (b) within such time as in any case the Ct. or judge may specially appoint, O. 33, r. 4, p. 258.

unless deponent be produced his affidavit shall not be used as evidence, unless by special leave of Ct., O. 33, r. 4, p. 258.

the party producing deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production, O. 33, r. 4, p. 258.

party receiving notice to produce deponent shall be entitled to compel the attendance of a witness to be examined, O. 33, r. 5, p. 258.

**AFFIDAVIT IN PARTICULAR ACTIONS.**

- before issue of Writ of Summons in probate action, O. 4, r. 10, p. 207.
- before issue of Writ of Summons in admiralty actions in rem, O. 4, r. 11, p. 207, 208.
- Ct. or judge may waive affidavit, O. 4, r. 11e, p. 208.
- before issue of Writ of Summons in rem on second or subsequent action, O. 4, r. 12, p. 208.
- as to day on which endorsement of service was made on Writ of Summons, O. 8, r. 11, p. 212.
- to support application under R.P. 5, for substituted service, O. 9, p. 213.
- in an admiralty action in rem to permit appearance of person interested when not named in writ, O. 11, r. 17, p. 216.
- to appear and defend in an action for the recovery of land where person in possession, O. 11, r. 18, p. 216.
- of service of Writ of Summons under R.P. 7, 8, where deft. fails to appear, O. 12, r. 2, p. 218.
- of service or notice in lieu of service may be filed where claim is for debt, O. 12, r. 4, p. 218.
- of service of writ in action assigned to C. Div. in probate actions, and cases not specially provided for, O. 12, r. 8, p. 219.
- in an admiralty action in rem where appearance has not been entered, O. 12, r. 9 s. (b), p. 219.
- where appearance has not been entered in an action of possession O. 12, r. 9 s. (g), p. 220.
- where deft. intends showing cause against application by pl. to enter final judgment, O. 13, r. 2, p. 221.
- in support where application for an account is made under rule 8, O. 14 p. 222.
- in probate actions as to scripts, O. 20, r. 2, p. 234.
- not necessary to verify pl. signature to authority to pay money out of Ct., O. 27, r. 3, p. 244.
- not necessary to direct any party to make discovery on oath of documents, O. 38, r. 9, p. 246.
- as to documents may be in form No. 9 in Schedule (B.), O. 28, r. 10, p. 246.
- showing of what documents inspection is sought, O. 28, r. 14, p. 247.
- by solicitor as to evidence of admissions, O. 29, r. 2, p. 249.
- necessary before entering judgment to be examined by officer, O. 36, r. 4, p. 262.
- that judgment has been recovered to support application for order to attach debts, O. 40, r. 2, p. 268.
- as to due service of judgment to recover possession of land, to entitle to sue out writ of possession, O. 43, r. 2, p. 271.
- showing right to order under, R.P. 43, O. 47, r. 2, p. 274.
- disclosing lien of third party on property claimed by pl., O. 47, r. 3, p. 274.

**ALLEGIANCE, OATH OF.**

- to be taken by all judges (except Ld. Ch.), s. 9, p. 6.
- defined by Promissory Oaths Act, 1868, s. 9, p. 6.
- the oath at length in section 5 of the Act, p. 93.

**ALLOTMENT.**

- of actions in London and Middlesex, R.P. 29, p. 74, see Trial.

**ALLOWANCES.**

- to judges to be paid out of Consolidated Fund on usual quarter days, s. 15, p. 8.
- of appeals from H.C. to C.A., to be subject to R.C. and Orders of Court, s. 19, p. 12.

**ALTERATIONS.—See Amendments.****AMENDMENTS.—See Pleading (5) Amendment of.**

- of any judgment or order on any appeal; C.A. to have powers of H.C. in, s. 19, p. 12.
- of the law upon certain points, s. 25, p. 19, see Rules of Law.
- Ct. may allow alteration of any statement, or may order, of any statement, scandalous or tending to prejudice, embarrass, or delay fair trial, R.P. 18, p. 71.

**AMENDMENTS.**—continued.

necessary for purpose of determining real questions in controversy to be made, R.P. 18, p. 71.  
of notice of appeal may be made at any time as to C.A. may seem fit, R.P. 51, p. 81.

**ANNUITY.**

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to judges who have served 15 years, or who are disabled, s. 14, p. 8.

**ANNULLING RULES OF COURT.**

provision for, as to assessors in ecclesiastical causes in C.A., s. 21, p. 13.  
provision for, made previously to the Act coming into operation, s. 68, p. 46.

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exceptions to, to interrogatories not to be taken except for insufficiency, R.P. 25, p. 73, see also Interrogatories; Costs.

**APPEALS**—See also Appeal, Court of; Judges of Court of Appeal; Notice of Motion on Appeal; Evidence in Court of Appeal.

pending proceedings in, to be continued in C.A., s. 22, p. 15.  
C.A. to have all powers of H.C. as enforcing, &c., s. 19, p. 12.  
no appeal from H.C. in criminal cases except for error of law apparent on the record, s. 47, p. 37, see Crown Cases Reserved.  
from county courts not to be assigned to C. Div., s. 34, p. 29.  
from petty or quarter sessions, from county court, or from inferior courts to be determined by D. Cts., s. 47, p. 36. Such appeals to be final unless D. Ct. give special leave to appeal to C.A., s. 45, p. 37.  
not to be from any judgment founded upon a verdict, unless motion to set aside verdict or judgment has been made to D. Ct., s. 48, p. 38.  
shall lie to C.A. from D. Ct. upon motion to set aside verdict or judgment, s. 48, p. 38.  
not to lie from order made by H.C. or any judge by consent, or as to costs only where in discretion of judge without leave, s. 49, p. 38.  
not to lie from order to set aside or discharge order without special leave of judge making order or of C.A., s. 50, p. 38.  
to C.A. to be heard by Ct. or D. Ct. of C.A., s. 53, p. 39.  
for re-argument before decision, or re-hearing before decision may be heard before a greater number of judges if C.A. so directs, s. 53, p. 39.  
judges not to sit on, from their own judgments, s. 54, p. 39.  
from judges orders as to trial, R.P. 28, p. 74.  
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to C.A., to be brought by, notice of motion in a summary way without necessity of petition, case or other formal proceeding, R.P. 51, p. 80.  
may be from whole or part of judgment or order, R.P. 50, p. 80.  
notice of motion to state whether appeal is in respect of whole or part only of judgment or order, and if the latter, to specify, R.P. 50, p. 80.  
notice of appeal, R.P. 51, p. 80, see Notice of Motion on Appeal.  
general powers of C.A., R.P. 52, p. 81, see Appeal, Court of.  
regulations as to cross appeals, R.P. 53, p. 81, see Cross Appeals.  
evidence on appeal, R.P. 54-55, p. 82, see Evidence in Court of Appeal.  
want of, from interlocutory order not to limit powers of C.A., s. 56, p. 82.  
from interlocutory order shall not, except by special leave of C.A., be brought after expiration of 21 days, R.P. 57, p. 82.  
(except from interlocutory order) not to be brought after termination of a year, R.P. 57, p. 82.  
periods limiting, to be calculated from signing, entering, or perfecting judgment or order, or from date of refusal of application, or from time prescribed by R.C., R.P. 57, p. 82.  
deposit or security for costs, occasioned by, to be given as prescribed by R.C., or directed by C.A., R.P. 57, p. 82.  
not to operate as stay of execution, or of proceeding under decision, except so far as Ct. appealed from, or any judge thereof, or C.A. may order, R.P. 58, p. 83.  
not to invalidate intermediate act or proceeding, except so far as Ct. appealed from may direct, s. 58, p. 83.  
in ecclesiastical causes, how to be heard, rules as to, s. 21, p. 13.

**APPEALS.**—continued.

not to lie to House of Lords or Judicial Committee of P.C. from judgments of H.C. and C.A., and Ct. of Ch. of county palatine of Lancaster, except in pending appeals, and where judgment or order shall have been obtained prior to commencement of act, s. 20, p. 12.

to H.M. in council, may be transferred to C.A., by order in council, s. 21, p. 12.

arrangements for hearing appeals, transferred from the Judicial Committee of P.C., s. 55, pp. 39-40.

costs of, R.P. 52, p. 81.

*Time of appeal.*

notice of appeal from any judgment, whether final or interlocutory, shall be a 14 day's notice, O. 52, r. 1, p. 279.

notice of appeal from any interlocutory order, shall be a four day's notice, O. 52, r. 1, p. 279.

notice by a respondent of motion, by way of cross appeal from a final judgment, shall be an 8 day's notice, O. 52, r. 2, p. 279.

notice by a respondent of motion, by way of cross appeal from an interlocutory order, shall be a two day's notice, O. 52, r. 2, p. 280.

time for appealing from any order or decision in winding up of a company under the Companies Acts, shall be same as time limited for appeal from an interlocutory order under R.P. 57, O. 52, r. 4, p. 280.

no appeal from an interlocutory order shall, except by special leave of C.A., be brought after the expiration of 21 days, R.P. 57, p. 82.

time for appeal from any order or decision made in the matter of bankruptcy, shall be same as time limited for appeal from an interlocutory order, O. 52, r. 4, p. 280.

no appeal from an interlocutory order shall, except by special leave of C.A., be brought after the expiration of 21 days, R.P. 57, p. 82.

time for appeal from any order or decision made in any matter not being an action shall be same as time limited for appeal from an interlocutory order, O. 52, r. 4, p. 280.

no appeal from an interlocutory order shall, except by special leave of C.A., be brought after the expiration of 21 days, R.P. 57, p. 82.

where an *ex parte* application has been refused by the Ct. below, an application for a similar purpose may be made to C.A., *ex parte* within four days from date of refusal or within such enlarged time as a judge of Ct. below, or of the C.A. may allow, O. 52, r. 5, p. 280.

*Proceedings on entering appeal.*

the party appealing from a judgment or order shall (a) produce to proper officer of C.A. the judgment or order, or an office copy thereof, and shall (b) leave with him a copy of the notice of appeal to be filed, O. 52, r. 3, p. 280.

such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, O. 52, r. 3, p. 280.

*Order of trial.*

officer shall set down appeal by entering same in the proper list of appeals, O. 52, r. 3, p. 280.

it shall come on to be heard according to its order in such list, O. 52, r. 3, p. 280.

unless C.A. or judge thereof shall otherwise direct, O. 52, r. 3, p. 280.

it shall not come into the paper for hearing before the day named in the notice of appeal, O. 52, r. 3, p. 280.

**APPEAL, COURT OF**—See also Appeal: Judges of Court of Appeal; Evidence in Court of Appeal; Notice of Motion on Appeal.

one of the two divisions of the Supreme Court, s. 4, p. 2.

to have appellate jurisdiction, with such original jurisdiction, as may be incident to any appeal, s. 4, p. 2.

constitution of, s. 6, p. 3-4-5.

constitution of, when hearing Ecclesiastical causes, s. 21, p. 13.

to be a superior court of record, s. 18, p. 11.

judges to be (I.) *ex-officio*; (II.) ordinary; (III.) additional, s. 6, pp. 3-4-5.

*ex-officio* judges to be five, and to be (I.) *Ld. Ch.*; (II.) *C.J. of England*; (III.) *M.R.*; (IV.) *C.J. of C.P.*; (V.) *C.B.*, s. 6, pp. 3-4.



## APPEAL, COURT OF.—continued.

- ordinary judges not to exceed nine, s. 6, pp. 3-4.  
 ordinary judges to be (I.) qualified to have been L.J. of former C.A. in Ch.; (II.) or judge of H.C. of not less than one year, s. 8, p. 5.  
 first ordinary judges to be (I.) existing lords justices of appeal in Ch.; (II.) existing salaried judges of judicial committee; (III.) such three other persons as H.M. may appoint, to be made within one month before 2nd Nov., 1874, or after that time, s. 6, p. 4.  
 vacancy in ordinary judgeship to be filled up by letters patent, s. 6, p. 5.  
 ordinary judges of C.A. may be included in commission for trials in London or Middlesex, s. 37, p. 32. additional judges may be appointed by royal sign manual, s. 6, p. 4.  
 of qualification of additional judges—they having been (I.) in England, judge of Superior Court or of Supreme Court; (II.) in Scotland, L.J. General or L.J. Clerk; (III.) in Ireland, Ld. Ch. or L.J. of Appeal; (IV.) in India, C.J. of H.C. at Fort William in Bengal, or Madras, or Bombay, s. 6, p. 4.  
 additional judges to signify in writing, willingness to serve, s. 6, p. 4.  
 additional judges not to be deemed to have undertaken duty of sitting in C.A., when prevented (I.) by attendance in House of Lords; (II.) on discharge of any other public duty; (III.) by any other reasonable impediment, s. 6, p. 4.  
 additional judges to be styled Lord Justices of Appeal, s. 6, p. 4.  
 all judges to have equal power, authority, and jurisdiction, s. 6, p. 5.  
 no judge of to sit in appeal from his own judgment, s. 54, p. 39.  
 Ld. Ch. to be president of C.A., s. 6, p. 5.  
 jurisdiction transferred to C.A., s. 18, pp. 11-12.  
 jurisdiction transferred to C.A., to be exercised only by C.A., s. 22, p. 14.  
 jurisdiction transferred to C.A., to be exercised as, provided by R.C. and Orders of Court, s. 23, p. 15.  
 jurisdiction of Judicial Committee may, by order in council, be transferred to C.A., s. 21, p. 13.  
 appeals from H.C., and from any judge thereof to be, to C. Div., s. 19, p. 12.  
 to be duly constituted during vacancy in office of judge, s. 7, p. 5.  
 to have all powers of H.C. for all purposes incident to appeal, s. 19, p. 12.  
 may execute, enforce, amend, and discharge perfected judgments, s. 22, p. 14.  
 pending proceedings in error, on appeal, and before C.A. in Ch., to be continued in C.A., s. 22, p. 15.  
 may (subject to R.C.), set at any time or place, s. 26, p. 23.  
 may direct how books, papers, and other chattels in possession of Cts. and their officers shall be dealt with, s. 92, p. 61.  
 judge of C.A. may sit as judge of H.C. in absence from illness of latter s. 51, p. 38.  
 a single judge may give any direction incidental to appeal, not involving decision of appeal, s. 52, p. 39.  
 a single judge may, during vacation, make any interim order to prevent prejudice to claims of any parties pending an appeal, subject to discharge or variation of D. C., s. 52, p. 39.  
 rules for concurrent administration of law and equity in C.A., s. 24, p. 16, see Rules.  
 no error or appeal from C.A. to House of Lords, s. 20, p. 12.  
 practice and procedure in criminal cases in C.A. to remain, subject to R.C., s. 71, p. 47.  
 Acts of Parliament relating to former Cts. to be read as applying to C.A., s. 76, p. 49.  
 general powers of C.A., R.P. 52, p. 81.  
 D. Cts. of C.A., s. 53, p. 39, see Divisional Courts of Court of Appeal.  
 cross appeals in C.A., R.P. 53, p. 81, see Cross Appeals.  
 appeals from H.C. of Admiralty or in Lunacy, transferred to C.A., s. 18, p. 11.  
 terms of appeals from H.C. to C.A., to be regulated by R.C. and Orders of Court, s. 19, p. 12.

**APPEAL, COURT OF.**—continued.

costs of appeals, R.P. 52, p. 81.

every application to a judge of the C.A. shall be by motion, O. 52, r. 9, p. 281.  
wherever an application may be made either to Ct. below or to the C.A., or to a judge of Ct. below or of the C.A. it shall be made in the first instance to the Ct. or judge below, O. 52, r. 8, p. 281.

**APPEAL, COURT OF, IN CHANCERY**—see also Lord Justices of Appeal; Lancaster.

interpretation of term, s. 100, p. 63.

jurisdiction of, not transferred to H.C., s. 17, p. 10.

jurisdiction of, and of same Ct. as C.A. in Bankruptcy, transferred to C.A. s. 18, p. 11.

pending proceedings before, to be continued in C.A., s. 22, p. 15.

**APPEARANCE.**

deft. to enter appearance by delivering to proper officer a memorandum in writing, O. 11, r. 6, p. 215.

if two or more defts. in the same action shall appear (I.) by same solicitor, and (II.) at same time, the names of all defts. so appearing shall be inserted in one memorandum, O. 11, r. 13, p. 216.

*Place to enter appearance.*

in London, if not otherwise provided, O. 11, r. 1, p. 214.

in district registry if deft. resides or carries on business in district of the issuing registry, O. 11, r. 2, p. 214; O. 4, r. 3, p. 206.

in either London or the issuing registry if deft. does not reside or carry on business in district of issuing registry, O. 11, r. 3, p. 214; O. 4, r. 2, p. 205.

*Proceedings to continue in district registry.*

(a) if sole deft. appears in district registry.

(b) if all defts. appear in district registry.

(c) if all defts. appearing, appear in district registry (the others making default), O. 11, r. 4, p. 214.

proceedings to continue subject to power of removal, O. 11, r. 4, p. 214.

*Proceedings to continue in London.*

(a) if deft. appears in London.

(b) if any of defts. appear in London, O. 11, r. 5, p. 214.

Ct. or Judge may order action to proceed in country if satisfied that deft. appearing in London (I.) is a merely formal deft. or (II.) has no substantial cause to interfere in the conduct of the action, O. 11, r. 5, p. 214.

*Memorandum of appearance.*

1. to be in writing.

2. to be dated on the day of the delivering thereof.

3. to contain name of defts. solicitor.

3a. or that deft. defends in person, O. 11, r. 6, p. 215.

6. to state address of deft. and

(a) if deft. appears by solicitor in London a place to be called his address for service (not more than three miles from Temple Bar), O. 11, r. 7, p. 215.

(b) if deft. appears in district registry by solicitor a place to be called his address for service within the district, O. 11, r. 7, p. 215.

(c) if deft. appears in person in London a place to be called his address for service (not more than three miles from Temple Bar), O. 11, r. 8, p. 215.

(d) if deft. appears in person in district registry, a place to be called his address for service within the district, O. 11, r. 8, p. 215.  
no memorandum to be received without such address, O. 11, r. 9, p. 215.

if address be illusory or fictitious, the appearance may be set aside by Ct. or judge on application of pl., O. 11, r. 9, p. 215.  
form provided for, O. 11, r. 10, p. 215.—The form, Schedule A, pt. 1, form 6, p. 215  
form to be used with such variations as circumstances of the case may require, O. 11, r. 10, p. 215.

if two or more defts. in the same action shall appear (I.) by the same solicitor: and (II.) at the same time, the names of all the defts. so appearing shall be inserted in one memorandum, O. 11, r. 13, p. 215.

**APPEARANCE.—continued.***Entry of appearance.*

upon receipt of memorandum of appearance, officer to enter forthwith an appearance in the cause book, O. 11, r. 11, p. 215.

*Under taking to appear.*

no service of writ shall be required when deft., by his solicitor, agrees to accept service and enters an appearance, R.P. 4, p. 66.

a solicitor not entering an appearance in pursuance of his written undertaking, shall be liable to an attachment, O. 11, r. 14, p. 216.

*Time for appearance.*

a deft. may appear at any time before judgment, O. 11, r. 15, p. 216.

if deft. appear at any time after time limited for appearance, he shall on the same day give notice thereof to (I.) the pl.'s solicitor, or (II.) pl., if pl. sues in person, O. 11, r. 15, p. 216.

he shall not be entitled to any further time for delivering his defence, or for any other purpose than if he had appeared according to the writ, unless Ct. or Judge otherwise orders, O. 11, r. 15, p. 216.

*Partners sued in name of firm.*

to appear individually in their own names, but all subsequent proceeding nevertheless, to be taken in name of firm, O. 11, r. 12, p. 215.

*In probate action.*

any person not named in writ may intervene and appear in action as heretofore, on filing an affidavit how he is interested in the estate of deceased, O. 11, r. 16, p. 216.

*In admiralty action in rem.*

any person not named in writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest or in the fund in the registry, O. 11, r. 17, p. 216.

*In action for recovery of land.*

any other person not named as deft. in writ, may by leave appear and deft. on filing an affidavit showing that he is in possession of the land either by himself or his tenant, O. 11, r. 18, p. 216.

any person appearing to defend as landlord in respect of property, whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord, O. 11, r. 19, p. 216.

where a person not named in the writ has obtained leave of Ct. or judge to appear and defend, he shall enter appearance as provided in R.C., intitled in the action against the party or parties named in the writ as deft. or defts., and shall forthwith give notice of such appearance to the pl.'s solicitor, or to pl., if pl. sues in person, O. 11, r. 20, p. 216.

any person appearing to a writ shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intitled in the cause, O. 11, r. 21, p. 217.

form of notice provided for, O. 11, r. 21, p. 217.—The form, Schedule A, pt. 1, form 7, p. 289.

an appearance where defence is not limited, shall be deemed an appearance to defend for the whole, O. 11, r. 21, p. 217.

**APPEARANCE, PROCEEDINGS IN DEFAULT OF.***Where deft. under disability.*

pl. may apply to Ct. or judge upon default, for an order that some person be assigned guardian to a deft., if deft. is (I.) an infant; or (II.) a person of unsound mind, not so found by inquisition, O. 12, r. 1, p. 217.

no order shall be made unless it appears on the hearing of such application.

1. that a copy of the writ of summons was duly served.

2. that notice of such application was (a) after the expiration of the time allowed for appearance; and (b) at least six clear days before the day, in such notice named for hearing the application, served upon or left at the dwelling house of the person with whom or under whose care such deft. was at the time of serving such writ.

**APPEARANCE, PROCEEDINGS IN DEFAULT OF.**—continued.

2a. and also (in case of such deft. being an infant not residing with, or under the care of his father or guardian), served upon or left at the dwelling house of his father or guardian of such infant, unless the Ct. or judge at the time of hearing such application shall dispense with such last mentioned service, O. 12, r. 1, p. 217.

*In writs specially endorsed for debt or liquidated demand in money.*—(Under R.P. 7, p. 66).

in case of non-appearance by deft., pl. may sign final judgment for any sum not exceeding the sum endorsed on writ, together with interest at the rate specified (if any), to date of judgment, and a sum for cost, R.P. 7, p. 67.

it shall be lawful for Ct. or judge to set aside or vary such judgment upon such terms as may seem just, R.P. 7, p. 67.

where deft. fails to appear, before taking proceedings for default pl. shall file an affidavit of service or of notice in lieu of service as the case may be, O. 12, r. 2, p. 218.

where there are several defts., and one or more of them appear to writ, and another or others of them do not appear, pl. may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared, O. 12, r. 3, p. 218.

before taking proceedings for default, affidavit of service must be filed, O. 12, r. 2, p. 218.

*In writs specially endorsed for account* (under R.P. 8, p. 67).

in default of appearance, an order for the account claimed with all directions now usual in Ct. Ch. in similar cases, shall be forthwith made, R.P. 8, p. 68.

where deft. fails to appear, before taking proceedings for default, pl. shall file an affidavit of service, or of notice in lieu of service, as the case may be, O. 12, r. 2, p. 218.

*Where pl.'s claim is for detention of goods and pecuniary damages* (but not for a debt, or liquidated demand only).

no statement of claim need be filed or delivered, O. 12, r. 4, p. 218.

before taking proceedings for default, pl. shall file an affidavit of service, or of notice in lieu of service, as the case may be, O. 12, r. 2, p. 218.

interlocutory judgment made be entered, and a writ of inquiry shall issue to assess the value of the goods and damages in respect of the causes of action disclosed by the endorsement on writ, O. 12, r. 5, p. 219.

Ct. or judge may order that instead of writ of enquiry, the value and amount of damages shall be ascertained in any way in which any question arising in an action may be tried, O. 12, r. 5, p. 219.

*Where pl.'s claim is for debt or liquidated demand.*—(Writ not being specially endorsed).

no statement of claim need be filed or delivered, O. 12, r. 4, p. 218.

before taking proceedings for default, pl. may file—

1. an affidavit of service, or of notice in lieu of service as the case may be, O. 12, r. 4, p. 218.

2. a statement of the particulars of his claim in respect of the causes of action stated in the endorsement upon the writ, O. 12, r. 4, p. 218.

final judgment may, after eight days, be entered by pl. filing affidavit and statement for amount shown in statement and costs to be taxed, provided that the amount shall not be more than the sum endorsed upon the writ besides costs, O. 12, r. 4, p. 218.

*In action for recovery of land.*

in case no appearance shall be entered, pl. to be at liberty to enter judgment that person whose title is asserted in writ shall recover possession of the land, O. 12, r. 6, p. 219. On filing an affidavit of service, or of notice in lieu of service as the case may be, O. 12, r. 6, p. 219.

In case an appearance be entered, but the defence be limited to part only, pl. to be at liberty to enter judgment, that person whose title is asserted in writ shall recover possession of the part thereof to which the defence does not apply, O. 12, r. 6, p. 219.

**APPEARANCE, PROCEEDINGS IN DEFAULT OF.**—continued.

when pl. has endorsed a claim for waste, mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, he may enter judgment and proceed as in the case of land, O. 12, r. 7, p. 219.

*In actions assigned to Chancery Division, in Probate actions, and in all other actions not specially provided for.*

in case the party served with the writ does not appear within the time limited for appearance upon filing a proper affidavit of service, the action may proceed as if such party had appeared, O. 12, r. 8, p. 219.

*In admiralty action in rem.*

where no appearance has been entered the following proceedings may be taken, O. 12, r. 9, pp. 219, 220, 221.

1. notice of sale may be taken out by pl. after the expiration of twelve days from filing of writ, O. 12, r. 9a, p. 219.

notice of sale to be advertised by pl. in two or more public journals, to be from time to time appointed by the judge, O. 12, r. 9a, p. 219.

if there be two or more actions by default pending against the same property, not necessary to take out notice of sale in more than one of the actions, O. 12, r. 9d, p. 220.

if pl. in first action does not within eighteen days from the filing of the writ in that action, take out and advertise the notice of sale, pl. in second or any subsequent action may take out and advertise notice of sale, if he shall have filed in the registry a writ of summons in rem in such second or subsequent cause, O. 12, r. 9d, p. 220.

within six days from the time when the proceeds have been paid into the registry, the pl. in each action shall, if he has not done so, file his proofs in the registry and have the action placed on the list for hearing, O. 12, r. 9e, p. 220.

2. after expiration of six days from advertisement of notice of sale in public journals, if an appearance has not been entered, pl. to file in the registry.

(a) an affidavit to the effect that the said notices have been duly advertised with copies of the journals annexed.

(b) such proofs as may be necessary to establish the claim.

(c) a notice of motion to have the property sold, O. 12, r. 9b, p. 220.

3. judge may order property to be appraised and sold, and the proceeds to be paid into registry if judge is satisfied that the claim is well founded when the motion comes before him, O. 12, r. 9c, p. 220.

4. in an action of possession, after the expiration of six days from the filing of the writ, if an appearance has not been entered, the pl. may, on filing in the registry a memorandum, take out a notice of proceeding in the action, to be advertised by him in two or more public journals to be from time to time appointed by the judge, O. 12, r. 9f, p. 220.

- 4a. after the expiration of six days from the advertisement of the notice of proceedings in the said journals, if an appearance has not been entered the pl. shall

(a) file in the registry an affidavit to the effect that the notice has been duly advertised, with copies of the journals annexed.

(b) file in the registry such proofs as may be necessary to establish the action.

(c) have the action placed on the list for hearing, O. 12, r. 9g, pp. 220-221.

- 4b. judge may pronounce for claims when action comes before him, and decree possession of the vessel accordingly, if he is satisfied that claim is well founded, O. 12, r. 9h, p. 221.

**APPELLATE JURISDICTION.**

from inferior Cts., vested in H.C., s. 4, p. 2.

vested in C.A., s. 4, p. 2.

of C.A. in Ch. or in bankruptcy, not transferred to H.C., s. 17, p. 10.

of C.A. in Ch. and in bankruptcy, transferred to C.A., s. 18, p. 11.

**APPLICATION.**—See also Orders.

to transfer cause from Inferior Ct. to H.C., may be made to H.C. by any party to a cause beyond jurisdiction of Inferior Ct., s. 90, p. 60.

for stay of proceedings may be made by motion in a summary way, s. 94, p. 18.

**APPLICATION.—continued.**

to be commenced as heretofore, if not heretofore commenced by action, suit, cause or citation. R.P. 1, p. 65.  
 for correction of mis-joinder or non-joinder of parties may be made, R.P. 9, p. 68.  
 for names of co-partners suing or being sued in name of firm may be made, R.P. 11, p. 69.  
 to disallow counter-claim as inconvenient, may be made by pl., R.P. 20, p. 72.  
 to have action tried in any of the ways, may be made by deft., R.P. 31, p. 75.—See also Trial.  
 where by R.C. any application is authorised to be made to the Ct. or a judge in an action, such application if made to a D.C. shall be made by motion, O. 48, r. 1, p. 274.—See Motion.  
 every application to the judge of C.A. shall be by motion, O. 52, r. 9, p. 281.  
 wherever an application may be made either to Ct. below or to C.A., or to a judge of Ct. below or of C.A., it shall be made in the first instance to the Ct. or judge below, O. 52, r. 8, p. 281.

**APPLICATIONS AT CHAMBERS.—See Chambers.****APPOINTMENT.**

of judges of H.C. to be by letters patent, s. 5, p. 3.  
 of L.C.J. of England, M.R., C.J. of C.P., and C.B. to be same as heretofore, s. 5, p. 3.  
 manner of appointment of judges of H.C. to be as Puisne Justices and Puisne Barons of Superior Cts., have heretofore been appointed, s. 5, p. 3.  
 no fresh appointment to be made while whole number of Puisne Justices and Junior Barons exceeds twelve, s. 5, p. 3.  
 of the three unnamed ordinary judges of C.A., to be either within one month of, or after commencement of Act, s. 6, p. 4.  
 of the three unnamed ordinary judges of C.A. to be by letters patent, s. 6, p. 4.  
 of additional judges of C.A. to be by Royal sign manual, s. 6, p. 4.  
 of judge of H.C. as judge of C.A., vacates former office, s. 7, p. 5.  
 qualifications for appointment of judges, s. 8, p. 5.  
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 of ordinary and additional judges of C.A. (if not Peers or P.C.), to determine rank in Supreme Ct., s. 10, p. 6.  
 of judges of H.C. (if not judges of C.A.), to determine rank in Supreme Ct., s. 10, p. 6.  
 power of appointment, belonging to existing judges, to be retained if appointed judges of H.C. or ordinary judges of C.A., s. 11, p. 6.  
 of assessors by H.C. or C.A., s. 56, p. 41.  
 of official referees, s. 83, p. 55, see also Referees Official.  
 of officers of Supreme Ct., s. 84, pp. 56-57.  
 of (I.) officers to perform duties to Supreme Ct. generally; (II.) officers attached to H.C.; (III.) officers attached to C.A.; (IV.) commissioners to take oaths or affidavits in Supreme Ct., to be by Ld. Ch., s. 84, pp. 56-57.  
 of officers attached to C. Div. of H.C., who have been heretofore appointed by M.R., to continue, while so attached, with M.R., s. 84, p. 57.  
 of all other officers attached to any division of H.C., by president of division, s. 84, p. 57.  
 of all officers attached to any judge to be made by such judge, s. 84, p. 57.  
 of sheriffs to be same as to order, and course in Ex. Div. of H.C., as heretofore in Ct. of Ex., s. 96, p. 62.

**ARBITRATORS.—See Referees (generally); Referee (official); Referee (special).****ARCHBISHOPS.**

and bishops eligible to sit as assessors in Ecclesiastical causes in C.A., s. 21, p. 13.  
 if P.C., to advise as to G.R., as to assessors in Ecclesiastical causes in C.A., s. 21, p. 13.

**ASSEMBLY.—See also Council of Judges.**

of council of Judges of Supreme Ct. to be once at least in every year, on days to be fixed by Ld. Ch., with concurrence of C.J. of England, s. 75, p. 49.

**ASSEMBLY.**—continued.

of council of judges to consider (I.) operation of Judicature Act, 1873; (II.) R.C. (III.) working of offices; (IV.) arrangements relative to duties of officers, and also to; (V.) inquire and examine into any defects in existing procedure or administration of law in H.C., or C.A., or in any inferior Ct. to which appeal lies to C.A. or H.C., s. 75, p. 49.

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Ct. may try and hear causes with assistance of one or more assessors specially qualified, s. 56, p. 41.  
remuneration to be paid such special, to be determined by Ct., s. 56, p. 41.  
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**ASSETS.**

of insolvent estates to be administered as in bankruptcy, s. 25, p. 19.

**ASSIGNMENT.**

of action to division of H.C. to be endorsed on writ of summons, R.P. 2, p. 66.  
of debts and choses in action, s. 25, p. 21, see Choses in Action.  
action not to abate by death, marriage, or bankruptcy, if action does not become defective by, R.P. 17, p. 70.  
of estate or title pendente lite, action may be continued against person upon whom such estate or title has devolved, R.P. 17, p. 70.

**ASSIGNMENT OF BUSINESS.**—See Distribution of Business.**ASSISTANCE**—See also Assessors; Referees.

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appointment of, s. 29, p. 24.  
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causes not involving questions of fact may, by consent, be tried by commissioners under, s. 29, p. 25.  
no judges appointed before passing of Act, not liable to act on, to be now liable to act on, s. 11, p. 6.  
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commissions granted by H.M. to be as valid as if named in Act, s. 29, p. 24.  
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**ATTACHMENT.**

persons entitled to enforce judgments, &c., by, may apply by motion in a summary way to restrain proceedings, s. 24, p. 18.

**ATTACHMENT OF DEBTS.**

judgment debtor may be orally examined as to whether any and what debts are owing to him, O. 40, r. 1, p. 268.

**Application for Order to Examine.**

may be made where a judgment is for the recovery by or payment to any person of money, O. 40, r. 1, p. 268.  
may be made by party entitled to enforce judgment, O. 40, r. 1, p. 268.  
may be made to the Ct. or a judge that debtor be orally examined before (I.) an officer of the Ct. or (II.) such other person as Ct. or judge shall appoint, O. 40, r. 1, p. 268.

**ATTACHMENT OF DEBTS.—continued.***Order for Examination, &c.*

Ct. or judge may make an order (I.) for the examination of judgment debtor, and (II.) for the production of any books or documents, O. 40, r. 1, p. 268.

*Garnishee Order.*

Ct. or judge may order that all debts owing or accruing from garnishee to judgment debtor shall be attached to answer judgment debt, O. 40, r. 2, p. 268.

application for order may be *ex parte* by judgment creditor, O. 40, r. 2, p. 268.

application for order may be either before or after oral examination, O. 40, r. 2, p. 268.

application for order may be upon affidavit (I.) by judgment creditor, or (II.) his solicitor stating (a) that judgment has been recovered (b) that it is still unsatisfied (c) to what amount (d) that any other person is indebted to judgment debtor, and is within the jurisdiction, O. 40, r. 2, p. 268.

garnishee may be ordered by same or subsequent order to appear before Ct. or a judge or an officer of Ct., as Ct. or judge shall appoint to how cause why he should not pay judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy judgment debt, O. 40, r. 2, p. 268.

debts in hands of garnishee to be bound by (I.) service of order that debts due or accruing to judgment debtor shall be attached, or (II.) notice thereof, O. 40, r. 3, p. 269.

*Execution against Garnishee.*

Ct. or judge may order execution to issue if (I.) garnishee does not forthwith pay into Ct. (a) the amount due from him to the judgment debtor or (b) an amount equal to judgment debt, and (c) does not dispute debt due or claimed to be due from him to judgment debtor or if (II.) he does not appear upon summons, O. 40, r. 4, p. 269.

execution may issue without any previous writ or process to levy (I.) the amount due from garnishee or (II.) so much thereof as may be sufficient to satisfy judgment debt O. 40, r. 4, p. 269.

payment made by or execution levied upon garnishee to be a valid discharge to him as against judgment debtor to the amount paid or levied, although such proceedings may be set aside or judgment reversed, O. 40, r. 8, p. 270.

*Dispute of Liability by Garnishee.*

if garnishee disputes his liability, Ct. or judge, instead of making order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, O. 40, r. 5, p. 269.

whenever it suggested that the debt sought to be attached belongs to some third person or that any third person has a lien or charge upon it, Ct. or judge may order such third person to appear and state the nature and particulars of his claim upon such debt, O. 40, r. 6, p. 269.

after hearing allegations of third party or any other person ordered to appear or in case of third party not appearing Ct. or judge may order (a) execution to issue to levy amount due from garnishee or (b) any issue or question to be tried or determined and (I.) may bar claim of third party or (II.) may make such order as shall seem fit on terms, O. 40, r. 7, p. 269.

*Debt attachment book.*

a debt attachment book shall be kept by proper officer, O. 40, r. 9, p. 270.

to contain entries of attachment and proceedings thereon with (I.) names (II.) dates (III.) statements of amount recovered (IV.) and otherwise, O. 40, r. 9, p. 270.

copies of any entries made therein may be taken on application to proper officer, O. 40, r. 9, p. 270.

*Costs.*

of application or any attachment of debts and of any proceedings arising from or incidental to such application shall be in the discretion of Ct. or judge, O. 40, r. 10, p. 270.



**ATTACHMENT—WRIT OF.**

a writ of attachment to have same effect as writ of attachment issued out of Ct. Ch. has heretofore had, O. 39, r. 1, p. 268.

no writ of attachment to be issued without leave of Ct. or judge, O. 39, r. 2, p. 268.

application may be made on notice to party against whom attachment is to be issued, O. 39, r. 2, p. 268.

**ATTENDANCE.**

Ct. may make order to prevent deft.'s, in an action in which he has no interest, R.P. 23, p. 72.

in House of Lords, an excuse of non-attendance of additional judges of C.A., s. 6, p. 4.

**ATTORNEYS**—See Solicitors of Supreme Ct.; Commissioners of Supreme Ct. jurisdiction of Cts. over, s. 87, pp. 58-59.

**AUTHORITY**—See also Jurisdiction.

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of judges of C.A. to be equal, s. 6, p. 5.

not incident to administration of justice, to be exercised by every judge of H.C. (except those to be performed by Ld. Ch., C. J. of England, M.R., C.J. of C.P., and C.B.), s. 12, p. 7.

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**AWARD OF ARBITRATORS**—See Referees (generally); Referee, Special; Referee, Official.

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**BANC.**

all business belonging to Q.B., C.P., and Ex. Div., which would formerly have been transacted by Cts. sitting in, may be transacted by, s. 41, p. 34.

**BANK OF ENGLAND**.—See Distringas.

**BANKRUPTCY**.—See also Pleading (7), Marriage, Death, and Bankruptcy of Parties.

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of parties not to abate action if cause of action survive or continue and does not become defective, R.P. 17, p. 70.

in case of bankruptcy of any party to an action Ct. may order trustee or other successor in interest to be made a party or be served with notice, R.P. 17, p. 70.

**BANKRUPTCY, CHIEF JUDGE IN.**

to be included in term, London Ct. of Bankruptcy, s. 100, p. 63.

**BANKRUPTCY, C.A. in,**

jurisdiction of C.A. in Chancery, sitting as, not transferred to H.C., s. 17, p. 10, but transferred to C.A., s. 18, p. 11.

**BANKRUPTCY, LONDON COURT OF**

interpretation of term, s. 100, p. 63

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jurisdiction of, transferred to H.C., s. 16, p. 10.

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- BENGAL, FORT WILLIAM IN**—See India.
- BILL IN CHANCERY**  
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- BILLS OF EXCEPTIONS**  
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**CHAMBERS.**

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 R.C. may be made by order in council, before commencement of Act, for the regulation of the judges of the H.C. sitting in, s. 68, p. 45.  
 orders made by judge in (except orders by consent, and as to costs left in discretion of judge), may be set aside or discharged by D.C. or judge sitting in Ct., s. 50, p. 38.

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every application authorized by R.C. to be made in a summary way by summons, O. 49, r. 1, p. 276.  
 all business to be transacted, and all authority and jurisdiction in respect of the same as under the Act, R.P. or R.C. may be transacted or exercised by a judge at Chambers, to be transacted and exercised in Q.B., C.P., and Ex. Div. by a master, and in P.D. and A. Div. by a registrar, with exceptions, O. 49, r. 2, p. 278.

The following proceedings and matters not to be transacted by master or registrar :—

1. All matters relating to criminal proceedings or to the liberty of the subject.
2. The removal of actions from one division or judge to another division or judge.
3. The settlement of issues, except by consent.
4. Discovery whether of documents or otherwise and inspection, except by consent.
5. Appeals from district registrars.
6. Interpleader other than such matters arising in interpleader as relate to practice only, except by consent.
7. Prohibitions.
8. Injunctions and other orders under sub-section 8 of sec. 25, or under R.P. 43, 44, and 45.
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**DELIVERY**—See also Statement ; Statement of Complaint ; Statement of Defence ; Statement of Reply.  
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**DISTRIBUTION OF BUSINESS.**

transferred to H.C., among the several Divs. and judges of H.C., to be provided by R.C. or orders of transfer, s. 33, p. 23.

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option for any pl. (subject to R.C.) to choose in what Div. he will sue (except P.D. and A. Div.) by marking document with name of Div., and giving notice to proper officer of Ct., s. 35, p. 31.

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causes commenced in C. Div. of H.C. to be assigned to one judge by marking same with name of judge chosen (subject to transfer), by pl., s. 42, pp. 35-36.

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causes assigned to P.D. and A. Div. may be heard at request of President of Div., with concurrence of President, of H.C., by any other judge of H.C., s. 44, p. 36.

of H.C. and C.A., and in D. Cts. or other Cts., or in Chambers, amongst several offices attached to supreme Ct., s. 77, p. 51.

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**DISTRICT REGISTRARS—See also District Registries.**

H.M. may, by order in Council, direct that there shall be, s. 60, p. 42.

district of, to be defined in order in Council, s. 60, p. 42.

H.M. may appoint as (I.) Registrar of County Cts.; (II.) Registrar of local Cts.; (III.) Prothonotary of local Ct.; (IV.) District Prothonotary of local Cts.; (V.) District Registrar of Probate Ct.; (VI.) District Registrar of Admiralty Ct., s. 60, p. 42.

**Powers and duties.**

to have power to administer oaths and perform duties in respect of proceedings in H.C. and C.A. assigned to them by R.C. or any special order of Ct., s. 62, p. 43.

may exercise all such authority and jurisdiction in respect of action as may be exercised by a judge at Chambers, O. 31, r. 5, p. 251.

**DISTRICT REGISTRARS—continued.**

- except such as a master of Q.B., C.P., or Ex. Divs. is precluded by R.C. from exercising, O. 31, r. 5, p. 251.
- applications to registrar to be made in same manner in which applications at Chambers are by R.C. directed to be made, O. 31, r. 6, p. 251.—See Chambers.
- table of fees to be taken by, to be fixed and altered by Ld. Ch. with sanction of Treasury, s. 63, p. 43.
- fees of, to be received and collected by stamps, s. 63, p. 43.
- provisions of Courts of Justice Act, 1869, to apply to fees of, s. 63, p. 43.
- writs of summons for commencement of actions in H.C. to be issued by, subject to R.C., s. 64, p. 44.
- further proceedings (unless H.C. or Judge order the contrary), including proceedings for arrest or detention of a ship down to and including entry for trial or down to and including signing final judgment or order for account to be taken before, s. 64, p. 44.
- to transmit proceedings and documents to proper office of H.C. on receipt of order from H.C., s. 65, p. 44.
- H.C. may order books or documents to be produced or accounts to be taken or enquiries to be made by, s. 66, p. 45.
- to carry into effect order of H.C. in manner prescribed as to production of, books and documents and taking of accounts and enquiries by, s. 66, p. 45.
- to report in writing as to such accounts and inquiries, s. 66, p. 45.
- report of as to accounts and inquiries, may be acted upon by H.C., s. 66, p. 45.
- registrar may refer to a judge any matter which appears to district registrar proper for decision of a Judge, O. 31, r. 7, p. 251.
- judge may either dispose of the matter, or refer the same back to the registrar with such directions as he may think fit, O. 31, r. 7, p. 251.
- every district registrar and other officer of a D.R. shall be subject to the orders and directions of the Ct. or judge as fully as any other officer of the Ct., O. 31, r. 10, p. 251.

***Appeal from registrar.***

- any person affected by any order or decision of a district registrar may appeal to a judge, O. 31, r. 8, p. 251.
- appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a judge or the registrar, O. 31, r. 8, p. 251.
- appeal from district registrar shall be no stay of proceedings, O. 31, r. 9, p. 251.
- unless so ordered by judge or registrar, O. 31, r. 9, p. 251.

**DISTRICT REGISTRIES—See also District Registrars.**

- Ct. or judge may order books and documents to be produced, or accounts to be taken in office of, although cause commenced in London, s. 66, p. 45.
- in case of reference to, District Registrar to carry directions into effect as prescribed, s. 66, p. 45.
- accounts and inquiries directed to be made by, to be reported on in writing by District Registrar, and report may be acted upon by H.C., s. 66, p. 45.
- every proceeding in a D.R. shall be subject to the control of Ct. or judge as fully as a like proceeding in London, O. 31, r. 10, p. 251.

***Area.***

- to be defined in order in Council directing that there shall be District Registrars, s. 60, p. 42.
- such orders may be issued from time to time after passing of Act, 5th August, 1873, s. 60, p. 43.
- the district of D.R. in county of Lancaster shall mean district thereto assigned by any order of H.M. in Council, O. 31, r. 1, p. 250.
- the district of any other D.R. shall mean a circle with a radius of three miles as a crow flies from the registry, O. 31, r. 1, p. 250.

***What proceeding to be taken in,***

- writs of summons for commencement of action in H.C. may be issued from, s. 60, p. 42.—



**DISTRICT REGISTRIES—continued.**

proceedings (unless H.C. or judge order the contrary), including proceedings for arrest or detention of a ship, down to and including entry for trial, or down to and including signing final order for an account, may be recorded in manner prescribed by R.C., s. 64, p. 44.

all other proceedings prescribed by R.C. to be taken, and if necessary, recorded in, s. 64, p. 44.

when an action proceeds in the D.R. all proceedings (except where otherwise provided by R.C. or the Ct. or judge otherwise orders), shall be taken in D.R. down to and including the entry for trial of the action or issues therein, O. 31, r. 2, p. 250.

if the pl. is entitled to enter final judgment or to obtain an order for an account by reason of the default of a deft. then down to, and including such judgment or order, O. 31, r. 2, p. 250.

but such judgment or order shall be entered in the D.R. in the proper book in the same manner as a like judgment or order in an action proceeding in London would be entered in London, O. 31, r. 2, p. 250.

the judgment and all such orders in an action as require to be entered shall be entered in London when action proceeds in D.R., O. 31, r. 3, p. 250.

an office copy of every judgment and order so entered shall be transmitted to the D.R., to be filed with the proceedings in the action, O. 31, r. 3, p. 251.

exceptions:—judgments and orders for account which may be signed in D.R., and orders made by registrar under R.C., O. 31, r. 3, p. 250.

all writs of execution for enforcing any judgment or order in action which proceeds in D.R., shall issue from registry, O. 31, r. 4, p. 251.

unless Ct. or judge shall otherwise direct, O. 31, r. 4, p. 251.

as to authority of, applications to, reference by, appeal from, and control of district registrars, see District Registrars.

***Removal of proceedings to London as of right.***

any deft. may remove action from D.R. as of right:—

(I.) where writ is specially endorsed under R.P. 7, and the pl. does within four days after appearance give notice of an application for an order against him under order 13, O. 31, r. 12, p. 252.

deft. may remove at any time after expiration of such four days, and before delivering a defence, and before the expiration of time for so doing, O. 31, r. 12, p. 252.

(II.) where writ is specially endorsed under R.P. 7, and pl. has made application under Order 13, and deft. has obtained leave to appear under Order 13, O. 31, r. 12, p. 252.

deft. may remove at any time after order, giving him leave to defend, and before delivering a defence, and before the expiration of the time for so doing, O. 31, r. 12, p. 252.

(III.) where writ is not specially endorsed, O. 31, r. 12, p. 252.

deft. may remove at any time after appearance, and before delivering a defence, and before the expiration of the time for so doing, O. 31, r. 12, p. 252.

any deft. desirous to remove an action as of right may do so by serving upon the parties to the action and delivering to the district registrar a notice, O. 31, r. 13, p. 252.

notice to be signed by himself or his solicitor to the effect that he desires the action to be removed to London, O. 31, r. 13, p. 252.

the action shall be removed to London according to notice, O. 31, r. 13, p. 252.

Ct. or judge may order that action proceed in D.R. notwithstanding notice (a) if Ct. or judge shall be satisfied that deft. giving such notice is merely a formal deft., or (b) has no substantial cause to interfere in conduct of action, O. 31, r. 13, p. 252.

***Applications to remove in other cases.***

any party may apply (in manner prescribed by R.C.) to H.C., or to Judge in Chambers, to move proceedings from, to proper office of H.C., s. 65, p. 44. Ct. or judge may, on application for removal to H.C., direct proceedings to be continued in, s. 65, p. 44.

**DISTRICT REGISTRIES—continued.**

application may be made to Ct. or judge or district registrar by any party for an order to remove action from D.R. to London, O. 31, r. 14, p. 253.

Ct., judge or registrar may make an order accordingly if satisfied that there is sufficient reason for doing so, upon such terms (if any) as shall seem just, O. 31, r. 14, p. 253.

**Effect of removal.**

when Ct. or judge grants application for removal from D.R. proceedings and original documents filed to be transmitted to proper office of H.C., s. 65, p. 44.

on removal from, action to proceed in H.C., as if writ of summons had been issued out of proper office in London, s. 65, p. 44.

district registrar shall transmit to proper office of H.C. all original documents (if any) filed in the D.R. and a copy of all entries in books of D.R. of the proceedings in the action, O. 31, r. 15, p. 253.

**Seals of D.R.**

seals of, to be under direction of Id. Ch., s. 61, p. 43.

seals of, to be impressed on every writ and other document issued out of or filed in, s. 61, p. 43.

writs, documents, exemplifications and copies bearing seal of, to be evidence without further proof, in all parts of United Kingdom, s. 61, p. 43.

**DIVISIONS.**

supreme Ct. to consist of two permanent divisions, viz. (I.) H.C. and (II.) C.A., s. 4, p. 2.

of H.C. to be five, s. 31, p. 25.

of H.C. to be designated (I.) Ch., (II.) Q.B., (III.) C.P., (IV.) Ex., (V.) P.D. and A., s. 31, p. 27.

judges of, s. 31, pp. 25-26, see also C. Div.; Q.B. Div.; C.P. Div.; Ex. Div.; P.D. and A. Div.

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D. Cts. for business belonging to, s. 44, p. 36, see also D. Cts.

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of H.C. to be for more convenient despatch of business, but not to prevent judge sitting in different divisions from his own, s. 31, p. 25.

pl. may choose (subject to R.C.) in which division he will sue (except P.D. and A. Div.), s. 35, p. 31.

**DIVISIONAL COURTS—See High Ct.; Appeal, Ct. of.**

of H.C., constitution and judges of, s. 40, p. 34.

causes and matters not proper to be heard by single judge, to be heard by, s. 40, p. 34.

to exercise all or any part of jurisdiction of H.C. while hearing such causes, s. 40, p. 34.

any number of D. Cts. of H.C. may sit at same time, s. 40, p. 34.

D. Cts. of H.C. to be constituted by two or three, and no more judges, s. 40, p. 34.

except through pressure of business or other cause, D. Cts. of H.C. to comprise three judges, s. 40, p. 34.

every judge capable of sitting in D. Cts. of H.C., s. 40, p. 34.

president of every D.C. of H.C. to be the senior judge present according to order of precedence under Act, s. 40, p. 34.

business of Q.B., C.P. and Ex. Div., which according to existing practice would be transacted by Ct. sitting in banc, may be transacted by D. Cts., s. 41, p. 34.

D. Cts. of H.C. to include, as far as practicable, one or more of judges attached to Div. to which cause assigned, s. 41, p. 34.

duty of every judge not otherwise engaged to take part in sittings in D. Cts., s. 41, p. 34.

judges of H.C. to make necessary arrangements for D. Cts., and in case of differences as agreed upon by majority, with concurrence of C.J. of England, s. 41, p. 35.

may be held for any part of the business of the C. Div., which judge to whom business assigned, with concurrence of President, thinks proper, s. 43, p. 36.

**DIVISIONAL COURTS—continued.**

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 appeals from inferior Cts. to be determined by D. Cts. of H.C., s. 45, p. 36.  
 cases and points may, by direction of judge, be reserved for, or directed to be argued before, s. 46, p. 37.  
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 D.C. of C.A. may discharge or vary order made by single judge, s. 52, p. 39.  
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**DIVORCE AND MATRIMONIAL CAUSES, JUDGE OF THE COURT OF.**

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**DIVORCE AND MATRIMONIAL CAUSES, THE COURT FOR.**

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 jurisdiction of, transferred to, s. 16, p. 9.  
 to form part of fifth division, s. 31, p. 27.  
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 business of, to be assigned to judge before whom commenced, s. 42, p. 35.  
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cost of affidavits, unnecessarily setting forth copies of or extracts from, to be paid by party filing, R.P. 38, pp. 76-77.  
 purporting to be sealed with seal of D.R., to be evidence in all parts of United Kingdom, s. 61, p. 43.  
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 by which any cause may be commenced in H.C., to be marked with name of Div., or with name of judge, to which or to whom the same is assigned, s. 33, pp. 28-29.

**Admission of Documents.**

either party in an action may call on the other side to admit a document, saving all just exceptions, R.P. 39, p. 77.  
 notice to admit provided for, O. 29, r. 1, p. 249.  
 the form, Schedule B., form 12, p. 303.  
 in case of refusal to admit, after notice, cost of proving to be paid by party refusing unless Ct. certify refusal was reasonable, R.P. 39, p. 77.  
 no costs of proving to be allowed unless notice to admit be given, unless taxing officer thinks omission to give notice is a saving of expense, R.P. 39, p. 77.  
 an affidavit of solicitor in cause, or his clerk of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit shall be sufficient evidence of such admission, O. 29, r. 2, p. 249.

**Discovery by Interrogatories.—See Interrogatories.****Discovery as to Documents.**

Ct. or judge may order the production by any party upon oath of such of the documents in his possession or power relating to any matter in question in such suit, or proceeding as Ct. or judge shall think fit, R.P. 27, p. 74.  
 order may be made at any time during pendency of action, R.P. 27, p. 74.  
 Ct. may deal with such documents when produced in such manner as shall appear just, R.P. 27, p. 74.

**DOCUMENTS—continued.***Application for discovery of order.*

any party may without filing any affidavit apply to a judge in Chambers for an order directing any other party to the action to make discovery in oath of the documents, which are or have been in his possession or power relating to any matter in question in the action, O. 28, r. 9, p. 246.

the affidavit to be made by party against whom order for discovery has been obtained, O. 28, r. 10, p. 246.

affidavit to specify, which if any, of the documents mentioned in order he objects to produce, O. 28, r. 10, p. 246.

form of affidavit provided for, O. 28, r. 10, p. 246.

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*Notice to produce.*

every party to an action, or other proceeding, shall be entitled at any time before, or at the hearing thereof, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof, R.P. 26, p. 73.

form of notice proved for, O. 28, r. 11, p. 247.

the form Schedule B., form 10, p. 247.

the party to whom such notice is given shall deliver to the party giving the same a notice stating a time, within three days from the delivery thereof, at which the documents, or such of them, as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on what ground, O. 28, r. 12, p. 247.

form of notice provided for, O. 28, r. 12, p. 247.

the form Schedule B., form 11, p. 247.

notice to be given within two days from receipt of notice of all the documents therein referred to have been set forth in an affidavit made on order to discover, or within four days, if any of the documents referred to in such notice have not been set forth in such affidavit, O. 28, r. 12, p. 247.

any party not complying with notice to produce shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, R.P. 26, p. 74.

unless he shall satisfy Ct. (a) that such document relates only to his own title he being a deft. to the action, or (b) that he had some other sufficient cause for not complying with such notice, R.P. 26, p. 74.

if party served with notice to produce omits to give notice of time for inspection, or objects to give inspection, the party may apply to a judge in Chambers for an order for inspection, O. 28, r. 13, p. 247.

*Order to inspect.*

every application for an order for inspection of documents shall be to a judge at Chambers, O. 28, r. 14, p. 247.

such application shall be founded upon an affidavit, showing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them and (c) that they are in the possession or power of the other party, O. 28, r. 14, p. 247.

except in the case of documents (a) referred to in the pleadings or affidavits of the party against whom the application is made or (b) disclosed in his affidavit of documents, O. 28, r. 14, p. 247.

*Objection to discover or allow inspection.*

Ct. or judge may order any question or issue to be determined first, and may reserve question as to discovery or inspection of party from whom discovery of any kind or inspection is sought objects to same or any part thereof, Ct. or judge may, if satisfied that (a) the right to discovery or inspection sought depends on the determination of any issue or question in the action, or (b) that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, O. 28, r. 15, pp. 247-248.

**DOCUMENTS—continued.***Attachment for disobedience to orders.*

service of orders on party's solicitor shall be sufficient service to found an application for an attachment for disobedience to the order, O. 28, r. 17, p. 248.

party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order, O. 28, r. 17, p. 248.

a solicitor upon an order against any party for discovery or inspection is served who neglects without reasonable excuse to give notice thereof to his client shall be liable to attachment, O. 28, r. 18, p. 248.

**DOUBT.**

as to parties to be sued, pl. may (subject to R.C. or special order) join two or more defts. to determine, which, if any, is liable, R.P. 13, p. 69.

as to status of officers attached to existing judge or Ct. to be determined by R.C., s. 81, p. 55.

**DUCHY OF LANCASTER**—see Lancaster, Chancellor of Duchy.

**DURATION.**

of pension to judges to be for life, s. 14, p. 8.

**DURHAM, COURT OF PLEAS AT**

pending matters in assigned to C.P. Div., s. 34, p. 30.

jurisdiction of transferred to H.C., s. 16, p. 10.

**DURHAM, COUNTY PALATINE OF.**

to cease to be County Palatine as to issue of commissions of assize, s. 99, p. 62.

**DUTIES**—see also Equitable Estates; Legal Estates.

of existing officers, to be similar to those now performed, s. 77, pp. 50-52.

of officers of Supreme Ct., s. 84, pp. 56-57, see officers.

of officers of Ld. Ch. to continue, s. 96, p. 61.

which existing judges capable of or liable to, to be performed by judges (subject to change by Act), s. 11, p. 6.

council of judges of Supreme Ct. annually to consider duties of officers, s. 75, p. 49.

not incident to administration of justice to which former judges were liable to be performed by every judge of H.C. (except those to be performed by Ld. Ch., C.J. of England, M.R., C.J. of C.P. or C.B.), s. 12, p. 7.

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shall commence on the Tuesday after Easter week, and terminate on the Friday before Whitsunday, O. 55, r. 1, p. 282.

**EASTER VACATION.**

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**EASTER WEEK.**

offices to be closed on Monday and Tuesday in, O. 55, r. 1, p. 282.

**ECCLESIASTICAL CAUSES.**—See General Rules.

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of infants, Rules of Equity to prevail in all questions as to, s. 25, p. 23.

**ELECTION.**

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**EMBARRASS.**

matter in any statement tending to, fair trial, may be struck out, R.P. 18, p. 71.

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of judgment or order on appeal, C.A. to have all powers of H.C. in, s. 19, p. 12.

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Estate for life without impeachment of waste, not to confer on tenant for life legal right to commit equitable waste without express intention, appears, s. 25, p. 20.

**EQUITIES.**

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no error to lie from judgment of H.C. or C.A., or Ct. Ch. of County Palatine of Lancaster to House of Lords or to Judicial Committee, but pending matters not to be affected, s. 20, p. 12.

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parties representing, may sue and be sued without those beneficially interested being joined, R.P. 14, p. 69.

in case of assignment, creation, or devolution of any estate pendente lite, the action may be continued by, or against the person to, or upon whom such estate or title has come or devolved, R.P. 17, p. 70.

insolvent, of deceased persons to be administered as in bankruptcy, s. 25, pp. 19-20.

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without impeachment of waste, not to confer upon tenant any legal right to commit equitable waste unless intention expressly appear, s. 25, p. 20.

**ESTATES**—See also Equitable Estates; Legal Estates; Particular Estate; Real Estates; Infants Estates.

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**EVIDENCE**—See also Evidence in C.A.; Affidavit.

mode of giving, by oral examination of witnesses in trial by jury not to be affected by Act, R.P. or any R.C., except as to power of Ct. for special reasons to allow depositions or affidavits to be read, s. 72, p. 47.

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of witnesses at trial, or assessment of damages to be *viva voce*, and in open Ct., R.P. 36, p. 76.

Ct. may order any particular facts to be proved by affidavit, and affidavit read at hearing or trial, subject to any conditions, R.P. 36, p. 76.

Ct. may order examination by interrogatories, or before a commissioner or examiner of witness absent for good reasons, R.P. 36, p. 76.

no order authorising, by affidavit, if witness *bona fide* required for cross-examination, R.P. 36, p. 76.

Ct. or judge may make order for examination upon oath before officer of Ct. or any other person, and at any place, and may order deposition so taken to be filed in Ct., R.P. 45, pp. 78-79.

power of Ct. to try preliminary questions of law before going into, R.P. 24, pp. 72-73.

documents cannot be put in, if notice to produce has been disregarded, R.P. 26, p. 74.

may be given by affidavit upon interlocutory application, R.P. 37, p. 76.

on application of either party Ct. or judge may order attendance for cross-examination of person making affidavit on interlocutory application, R.P. 37, p. 76.

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C.A. may receive further, on questions of fact, R.P. 52, p. 81.

further evidence in C.A. to be either by (I.) oral examination in Ct., (II.) affidavit, (III.) deposition before examiner, (IV.) deposition before commissioner, R.P. 52, p. 81.

further evidence upon interlocutory applications in C.A. may be given without special leave, R.P. 52, p. 81.

further evidence in C.A. may be given as to matters occurring in interval since decision appealed against, R.P. 52, p. 81.

special grounds and special leave of C.A. necessary for further evidence, except as above, R.P. 52, p. 81.

evidence taken in Ct. below to be brought up to C.A. (when question of fact involved), as prescribed by R.C., or Special order, R.P. 54, p. 82.

evidence of Ct. below may be referred to in C.A., where question as to ruling or direction arises, R.P. 55, p. 82.

evidence taken in Ct. below bearing on question shall be brought before C.A., where any question of law is involved in an appeal, O. 52, r. 6, p. 280.

subject to any special order under R.P. 54, O. 52, r. 6, p. 280.

any evidence taken by affidavit to be brought before C.A. by production of printed copies of such of affidavits as have been printed, and office copies of such of them as have not been printed, O. 52, r. 6, p. 280.

any evidence given orally to be brought before C.A. by production of copy of judges notes, or such other materials as Ct. may deem expedient, O. 52, r. 6, p. 281.

where evidence has not been printed in Ct. below, the Ct. below, or a judge thereof, or the C.A., or a judge thereof, may order the whole, or any part thereof, to be printed for the purpose of the appeal, O. 52, r. 7, p. 281.

any person printing evidence for the purpose of an appeal without such order shall bear the costs thereof unless the C.A., or a judge thereof, shall otherwise order, O. 52, r. 7, p. 281.

**EXAMINATIONS**—see *Examiner; Evidence; Evidence in C.A.*

Ct. or judge may make order for examination of witnesses, upon oath before officer of Ct., or any other person, and at any place, and may order depositions so taken to be filed in Ct., R.P. 45, pp. 78-79.  
mode of giving evidence by oral, of witnesses in trials by juries, not to be affected by Act, R.P. or R.C., s. 72, p. 47.

**EXAMINER.**

examination of witnesses may be taken by interrogatories or otherwise before, R.P. 36, p. 76.

**EXCEPTIONS.**

Bills of, abolition of, R.P. 49, p. 80.

to answer to interrogatories to be taken only on insufficiency, R.P. 25, p. 73, see *Interrogatories; Costs*.

**EXCEPTIONS FROM R.C.**

nothing in R.C. shall affect practice or procedure in (a) criminal proceedings, (b) proceedings on the Ct. side of the Q.B. Div., (c) proceedings on the Revenue side of the Ex. Div., (d) proceedings for Divorce, or other matrimonial causes, O. 56, p. 285.

**EXCHANGE**—See *Bills of Exchange*.**EXCHEQUER** See *Lord Chief Baron of the Exchequer; Chancellor of Exchequer; Barons of Court of Exchequer*.**EXCHEQUER, COURT OF.**

to be united and consolidated with other Cts., the whole to constitute Supreme Ct., s. 3, p. 2.

jurisdiction of, transferred to H.C., s. 18, p. 9.

exclusive jurisdiction of, as Ct. of Revenue and as Common Law Ct., assigned to Ex. Div., s. 34, p. 30.

pending business in, assigned to Ex. Div., s. 34, p. 30.

Lord Treasurer not to exercise any functions as judge of, s. 97, p. 62.

Ch. Ex. not to exercise any functions as judge of, s. 96, p. 61.

**EXCHEQUER CHAMBER, COURT OF.**

jurisdiction transferred to C.A., s. 18, p. 11.

**EXCHEQUER DIVISION.**

establishment of D.C. for business of, s. 41, p. 34, see *D. Cts.*

order of appointment of sheriff's heretofore used in Ex., to be used in, s. 96, p. 62.

deficiency in number of judges in, provided for, s. 31, p. 27.

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matters relating to (I.) pending business in Ex., (II.) exclusive jurisdiction of Ex., whether as Ct. of Revenue or Common Law Ct., (III.) pending business in London Ct. of Bankruptcy, (IV.) exclusive jurisdiction of London Ct. of Bankruptcy, assigned to, s. 34, pp. 30-31.

nothing in R.C. to affect practice and procedure in proceedings on Revenue side of Ex. Div., O. 56, p. 285.

**EXECUTION.**

of trusts, charitable or private causes, referring to, assigned to C. Div., s. 34, p. 29.

of judgments and orders on appeal, C.A. to have all powers of H.C. in, s. 18, p. 12.

except so far as ordered, appeal shall not operate as a stay of, R.P. 58, p. 82.

meaning of words, "writ of execution" in R.C., O. 37, r. 6, p. 263.

meaning of words, "issuing execution against any party" in R.C., O. 37, r. 6, p. 263.

nothing in R.C. shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever, O. 37, r. 21, p. 267.

nothing in R.C. shall effect the order in which writs of execution may be issued, O. 37, r. 21, p. 267.

**Manner of enforcing judgment in different cases.**

a judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Ct. whose jurisdiction is transferred by the Judicature Act might have been enforced at the time of the passing of the said Act, O. 37, r. 1, p. 262.



**EXECUTION—continued.**

- a judgment for payment of money into Ct. may be enforced by writ of sequestration, or in cases in which attachment is authorized by law by attachment, O. 37, r. 2, p. 262.
- a judgment for recovery or for delivery of possession of land may be enforced by writ of possession, O. 37, r. 3, p. 263.
- a judgment for recovery of any property (other than land or money), may be enforced by (a) writ for delivery of property, (b) writ of attachment, (c) writ of sequestration, O. 37, r. 4, p. 263.
- a judgment requiring any person (a) to do any other Act than payment of money, or (b) to abstain from doing anything, may be enforced by writ of attachment or by committal, O. 37, r. 5, p. 263.
- application may be made to Ct. or judge for leave to issue execution where a judgment is to the effect that any party is entitled to any relief, subject to or upon the fulfilment of any condition or contingency, the party so entitled may upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, O. 37, r. 7, p. 263.
- Ct. or judge may order (a) that execution issue accordingly, or (b) may direct that any issue or question necessary for the determination or the rights of the parties be tried in any of the ways in which questions arising in an action may be tried, if Ct. or judge be satisfied that the right to relief has arisen according to the terms of the judgment, O. 37, r. 7, p. 263.
- execution may issue when judgment is against partners (a) against any property of partners as such, (b) against any person who has admitted on the pleadings that he is or has been adjudged to be a partner, (c) against any person who has been served as a partner with the writ of summons, and has failed to appear, O. 37, r. 8, p. 263.
- application may be made to Ct. or judge if party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, O. 37, r. 8, p. 264.
- Ct. or judge may give such leave if the liability be not disputed, O. 37, r. 8, p. 264.
- Ct. or judge may order that liability (if disputed) of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined, O. 37, r. 8, p. 264.

**Issue of writ of execution.**

- no writ shall be issued without the production to proper officer of the judgment upon which the writ is to issue, or an office copy thereof, showing the date of entry, O. 37, r. 9, p. 264.
- the officer shall be satisfied that the proper time has elapsed to entitle creditor to execution, O. 37, r. 9, p. 264.
- writ shall be issued without the party issuing it, or his solicitor filing a praecipe for that purpose, O. 37, r. 10, p. 264.
- praecipe to contain (a) title of the action, (b) reference to the record, (c) date of the judgment, (d) date of the order, if any, directing the execution to be issued, (e) the names of the parties against whom, or (ee) of the firms against whose goods the execution is to be issued, O. 37, r. 10, p. 264.
- praecipe to be signed by the solicitor of the party issuing it, or by the party issuing it, if he do so in person, O. 37, r. 10, p. 264.

**Date and endorsements of writ.**

- every writ shall bear date of the day on which it is issued, O. 37, r. 12, p. 265.
- every writ shall be endorsed with name and place of abode, or office of business of the solicitor actually suing out the same, O. 37, r. 11, p. 264.
- when solicitor actually suing out the writ shall sue as agent, writ to be also endorsed with name and place of abode of such other solicitor, O. 37, r. 11, p. 264.
- in case no solicitor shall be employed to issue the writ, then it shall be endorsed with a memorandum expressing that the same has been sued out by the pl. or deft. in person, as the case may be, mentioning the

**EXECUTION—continued.**

city, town, or parish, and also the name of the hamlet, street, or number of the house of such pl'a. or def't's. residence, if any such there be, O. 37, r. 11, pp. 264-265.

every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff or other officer or person to whom the writ is directed (a) to levy the money really due and payable, and sought to be recovered under the judgment stating the amount, and (b) also to levy interest thereon, if sought to be recovered at the rate of 4 per cent. per annum from the time when the judgment was entered up, O. 37, r. 14, p. 266.

where there is an agreement between the parties that more than £4 per cent. interest shall be secured by the judgment then the endorsement may be accordingly to levy the amount of interest so agreed, O. 37, r. 14, p. 265.

***Levy of poundage.***

in every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution over and above the sum recovered, O. 37, r. 13, p. 265.

***Time of issue of writs.***

every person to whom any sum of money or any costs shall be payable under a judgment shall immediately after the time when the judgment was duly entered be entitled to sue out one or more writ or writs of *fi. fa.* or one or more writ or writs of *elegit* to enforce payment thereof, O. 37, r. 15, p. 265.

if judgment is for payment within a period therein mentioned, no such writ shall be issued until after the expiration of such period, O. 37, r. 15, p. 265.

Ct. or judge may (a) either at time of giving judgment, or (b) afterwards give leave to issue execution before, or may stay execution until any time after the expiration of the period prescribed, O. 37, r. 15, p. 265. as between the original parties to an action, execution may issue at any time within six years from the recovery of the judgment, O. 37, r. 15, p. 266.

where six years have elapsed since the judgment or any change has taken place by death or otherwise in the parties entitled, or liable to execution, the party alleging himself to be entitled may apply to Ct. or judge for leave to issue execution, O. 37, r. 19, p. 266.

Ct. or judge may (a) order execution to issue if satisfied, that the party applying is entitled, or (b) may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried, O. 37, r. 19, p. 266.

Ct. or judge may in either case impose such terms as to costs or otherwise as shall seem just, O. 37, r. 19, p. 266.

***Writ, how long in force and renewal of writ.***

writ if unexecuted to remain in force for one year only from its issue, O. 37, r. 16, p. 266.

writ may be renewed by the party issuing it, O. 37, r. 16, p. 266.

renewal may be at any time before its expiration, O. 37, r. 16, p. 266.

renewal must be by leave of Ct. or judge, O. 37, r. 16, p. 266.

renewal to be for one year from date of renewal, and so on from time to time during the continuance of the renewed writ, O. 37, r. 16, p. 266.

renewal to be (a) either by writ being marked with a seal of the Ct. bearing the date of the day, month, and year, of such renewal, or (b) by party giving a written notice of renewal to the sheriff signed by the party or his attorney, and bearing the like seal of the Ct., O. 37, r. 16, p. 266.

renewed writ to have same effect, and be entitled to priority according to the time of the original delivery thereof, O. 37, r. 16, p. 266.

production of writ of execution or of notice renewing same purporting to be marked with seal of Ct. showing same to have been renewed to be sufficient evidence of writ having been renewed, O. 37, r. 17, p. 266.

***How orders enforced, and by and against third parties.***

every order of the Ct. or judge whether in an action or matter may be enforced in the same manner as a judgment to the same effect, O. 37, r. 20, p. 266.

**EXECUTION—continued.**

any person not being a party in an action who obtains any order, or in whose favour any order is made shall be entitled to enforce obedience, to such order by the same process as if he were a party to the action, O. 37, r. 21, p. 266.

any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action, O. 37, r. 21, p. 266.

**Abolition of and substitution for audita querela.**

no proceeding by audita querela shall hereafter be used, O. 37, r. 22, p. 267.

any party against whom judgment has been given may apply to Ct. or a judge for a stay of execution or other relief against such judgment upon the ground of facts which have arisen too late to be pleaded, O. 37, r. 22, p. 267.

Ct. or judge may give such relief and upon such terms as may be just, O. 37, r. 22, p. 268.

**EXECUTION, WRIT OF.**

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interrogatories to contain a note at foot stating which of such interrogatories each person is required to answer, O. 28, r. 1, p. 245.

no party shall deliver more than one set of interrogatories to the same party without an order for that purpose, O. 28, r. 1, p. 245.

pl. may deliver interrogatories without order at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, O. 28, r. 1, p. 245.

deft. may deliver interrogatories without order at the time of delivering his defence or at any subsequent time not later than the close of the pleadings, O. 28, r. 1, p. 245.

either party may at any time deliver interrogatories by leave of the Ct. or a judge, O. 28, r. 1, p. 245.

form of interrogatories provided for, O. 28, r. 2, p. 245.

the form Schedule B., form 7, p. 302.

application may be made by any opposite party for an order allowing him to deliver interrogatories to any member or officer of a body corporate or joint stock company, whether incorporated or not, or any other body of persons empowered by law, to sue or be sued whether in its own name or in the name of any officer or other person, O. 28, r. 3, p. 245.

application to be made at Chambers, O. 28, r. 3, p. 245.

order may be made accordingly, O. 28, r. 3, p. 245.

*Objection to interrogatories.*

any party shall be entitled to object to any interrogatory on the ground of irrelevancy, and the Ct. or judge if not satisfied that such interrogatory is relevant to some issue in the cause may allow such objection, R.P. 25, p. 73.

application may be made to strike out any interrogatory on the ground that it is (a) scandalous or (b) irrelevant or (c) is not put bona fide for the purposes of the action, or (d) that the matter inquired after is not sufficiently material at that stage of the action, or (e) on any other ground, O. 28, r. 4, p. 246.

application may be made by any party called upon to answer interrogatories whether by himself or by any member or officer, O. 28, r. 4, p. 246.

**INTERROGATORIES.**—continued.

application to be made at Chambers, O. 28, r. 4, p. 246.

application to be made within four days after service of the interrogatories, O. 28, r. 4, p. 246.

Judge may order interrogatory to be struck out if satisfied that it is objectionable, O. 28, r. 4, p. 246.

*Answers to interrogatories.*

Interrogatories shall be answered by affidavit to be filed within ten days or within such further time as a judge in Chambers may allow, O. 48, r. 5, p. 246.

affidavit in answer shall, if exceeding three folios, be printed, O. 28, r. 5, p. 246.

form of affidavit provided for, O. 28, r. 5, p. 246.

the form, Schedule B, form 8, p. 302.

any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit, O. 28, r. 7, p. 246.

no exception shall be taken to any answer, R.P. 25, p. 73.

the sufficiency or otherwise of any answer objected to as insufficient shall be determined by the Ct. or judge in a summary way, R.P. 25, p. 73.

if any person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Ct. or a judge for an order requiring him to answer or to answer further as the case may be, O. 28, r. 8, p. 246.

an order may be made requiring him to answer or to answer further either by affidavit, or by *viva voce* examination as the judge may direct, O. 28, r. 8, p. 246.

if any party fails to comply with any order to answer interrogatories shall be liable to attachment, O. 28, r. 16, p. 248.

pl. shall also be liable to have his action dismissed for want of prosecution, O. 28, r. 16, p. 248.

deft. shall also be liable to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, O. 28, r. 16, p. 248.

the party interrogating may apply to Ct. or judge for an order to that effect, O. 28, r. 16, p. 248.

order may be made accordingly, O. 28, r. 16, p. 248.

anyone or more answers to interrogatories may be used in evidence at the trial of an action or issue by the opposite party, without putting in the others, O. 28, r. 19, p. 248.

the judge may look at the whole of the answers, and if of opinion that any other of the answers are so connected with those put in, that those used ought not to be used without the other, he may direct them to be put in, O. 28, r. 19, p. 248.

*Costs of improper interrogatories.*

Ct. in adjusting costs of action shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, R.P. 25, p. 73.

if it is the opinion of the taxing master or of the Ct. or judge that such interrogatories have been exhibited (a) unreasonably, (b) vexatiously, or (c) at improper length, the costs occasioned by the said interrogatories, and the answers thereto, shall be borne by the party in fault, R.P. 25, p. 73.

**IRELAND.**

persons who have been Ld. Ch. or C.J. of Appeal in, eligible as additional judges of C.A., s. 6, p. 4.

**IRRELEVANCY.**

any party may object to interrogatories on ground of, R.P. 25, p. 73, *see* Interrogatories; Costs.

**ISSUE.**

jurisdiction as to issue of commissions and other writings under Great Seal not transferred to H.C., s. 17, p. 10.

of Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, not to be affected, except as expressly directed, s. 23, p. 61.

**ISSUES OF FACT.**

where statement insufficiently discloses issues of fact, judge may order same to be prepared, such issues to be settled by himself if parties differ, R.P. 19, p. 71.

questions of law may be tried before questions of fact, R.P., 24, p. 72.

deft. may have issues of fact tried by judge and jury on giving proper notice, R.P. 31, p. 75, see Trial; Notice.

may be ordered to be tried by Commissioners of Assize, s. 29, p. 25.

causes not involving, may by consent be tried by Commissioners of Assize, s. 29, p. 25.

judge may direct parties to prepare (and if they differ may settle same) if statements of claim, defence, and reply do not sufficiently disclose issues of fact, R.P. 19, p. 71.

**JOINDER—See Mis-Joiner; Non-Joiner; Parties.****JOINDER OF CAUSES OF ACTION.**

pl. may (subject to R.C.) unite in same action, and in same statement of claim, several causes of action, R.P. 22, p. 72.

claim by pls. jointly may (subject to R.P. 22) be joined with claims by them or any of them separately against the same deft., O. 16, r. 5-6, p. 226.

claims by or against husband and wife, may (subject to R.P. 22) be joined with claims by or against either of them separately, O. 16, r. 3-6, pp. 225-226.

claims by or against an executor or administrator as such may (subject to R.P. 22) be joined with claims by or against him personally, provided the last mentioned claims are alleged to arise with reference to the estate in respect of which the pl. or deft. sues, or is sued as executor or administrator, O. 16, r. 4-6, p. 226.

every deft. in any action need not be interested as to all relief thereby prayed for, or as to every cause of action included therein, R.P. 23, p. 72.

**Exceptions.**

no cause of action shall be joined with an action for the recovery of land, O. 16, r. 1, p. 225.

unless by leave of the Ct. or a judge, O. 16, r. 1, p. 225.

except (a) claims in respect of mesne profits (b) arrears of rent in respect of the premises claimed or any part thereof (c) damages for breach of any contract under which same or any part thereof are held, O. 16, r. 1, p. 225.

claims by a trustee in bankruptcy, as such shall not be joined with any claim by him in any other capacity, O. 16, r. 2, p. 225.

unless by leave of the Ct. or a judge, O. 16, r. 2, p. 225.

**Application for order to confine and exclude.**

Ct. or judge may make such order as may appear just (a) to prevent any deft. from being embarrassed, or (b) put to expense by being required to attend any proceedings in such action in which he may have no interest, R.P. 23, p. 72.

Ct. or judge may (a) order separate trials of several causes of action (united by pl. in same action, and in same statement of claim) to be had or may (b) make such other order as may be necessary or expedient for the separate disposal thereof, if it appear to Ct. or judge that any such causes cannot be conveniently tried or disposed of together, R.P. 22, p. 72.

any deft. alleging that the pl. has united in the same action several causes of action which cannot be conveniently disposed of in one action may at any time apply to the Ct. or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding, O. 16, r. 7, p. 226.

if on hearing of application it shall appear to the Ct. or a judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Ct. or judge may order (a) any of such causes of action to be excluded, and (b) may direct the statement or claim, or (bb) if no statement of claim has been delivered the copy of the writ of sum-

## JOINDER OF CAUSES OF ACTION.—continued.

mons, and the endorsement of claim on the writ of summons to be amended accordingly, and (c) may make such order as to costs as may be just, O. 16, r. 8, p. 226.

**JUDGES (GENERALLY)**—See also Judges of High Court; Judges of Court of Appeal; Lord Chancellor; Lord Chief Justice of England; Master of the Rolls; Lord Chief Justice of Common Pleas; Lord Chief Baron; Bankruptcy, Chief Judge in; Admiralty, Judge of High Court of; Probate, Judge of Court of; Chancellor of Duchy and County Palatine of Lancaster; Chief Justice of High Court of Judicature; Puisne Justices; Council of Judges of the Supreme Court; Orders by Court or Judge; Lord Warden of the Stannaries; Judges of Transferred Courts; Judge in Chambers; Judges Marshall; Assize; Circuit; and the various Courts enumerated under the head of Courts.

not capable of being elected to or sitting in House of Commons, s. 9, p. 5.  
to hold office for life subject to removal on address by both Houses of Parliament, s. 9, p. 5.

oaths on appointment, s. 9, p. 5.

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**JUDGES OF C.A.**

to consist of (I.) *ex-officio*, (II.) ordinary, (III.) additional, s. 6, pp. 3-5.

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office to be vacated by resignation in writing, addressed to *Ld. Ch.*, s. 7, p. 5.

appointment of judge of H.C. to be judge of C.A., vacates former office, s. 7, p. 5.

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*G.R.* as to assessors in Ecclesiastical causes, to be made with advice of, s. 21, p. 13.

***Ex-officio.***

number to be five, s. 6, p. 3.

to be (I.) *Ld. Ch.*, (II.) C.J. of England, (III.) M.R., (IV.) C.J. of C.P., (V.) C.B., s. 6, p. 4.

to rank in Supreme Ct. in order of present official precedence, s. 10, p. 6.

***Ordinary.***

number not to exceed nine, s. 6, p. 4.

first ordinary judges to be (I.) existing Lords Justices of Appeal in Ch.,

(III.) existing salaried judges of Judicial Committee; (VII.) three other persons to be appointed by H.M. by letters patent, s. 6, p. 4.

new judges to be appointed on vacancy by letters patent, s. 6, p. 5.

saving of rights and obligations of existing judges, if appointed ordinary judges of C.A., s. 11, p. 6.

salary to be £5000 a year, s. 13, p. 8.

pension to be amount now payable to puisne justices of Q.B., s. 14, p. 8.

pension, salary, and allowances to be payable out of Consolidated Fund on usual quarter days, s. 15, p. 9.

qualification to be (I.) any person who would have been qualified heretofore as Lord Justice of C.A. in Ch., (II.) having been a judge of H.C. of one year's standing, s. 8, p. 5.

to be styled Lords Justices of Appeal, s. 6, p. 4.

an appointment not required to take or to have taken degree of serjeant-at-law, s. 8, p. 5.

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**JUDGES OF C.A.—continued.***Additional.*

any number may be appointed by Royal Sign Manual, s. 6, p. 4.  
 qualifications, having held the office (I.) in England, of judge of Superior Ct., or of H.M. Supreme Ct.; (II.) in Scotland, of Lord Justice General or Lord Justice Clerk; (III.) in Ireland, of Ld. Ch., or Lord Justice of Appeal; (IV.) in India, of C.J., of H.C., of Judicature at Fort William, in Bengal or Madras, or Bombay, s. 6, p. 4.  
 to signify in writing their willingness to serve, s. 6, p. 4.  
 not bound to sit when prevented by other duties, s. 6, p. 4.  
 to be styled Lord Justices of Appeal, s. 6, p. 4.  
 no salary to be payable, but any pension to which they may be entitled not to be prejudiced, s. 13, p. 8.  
 to rank (if Peers or P.C.) in order of present precedence, if not in order of appointment, s. 10, p. 6.

**JUDGES OF H.C.**

first judges to be (I.) Ld. Ch., (II.) C.J. of England, (III.) M.R., (IV.) C.J. of C.P., (V.) C.B., (VI.) the three Vice-Chancellors, (IX.) judge of Ct. of Probate, (X.) the several puisne justices and barons of Cts. of Q.B., C.P., and Ex. respectively, (XXV.) judge of H.C. of Admiralty (except such as may be appointed ordinary judges of C.A.), s. 5, p. 2.  
 new judges may be appointed by letters patent, s. 5, p. 3.  
 to be styled in appointment, Judge of H.M.'s H.C. of Justice, s. 5, p. 3.  
 to be appointed in same manner as puisne justices and junior barons of Superior Cts. have heretofore been appointed, s. 5, p. 3.  
 permanent number not to exceed 21, s. 5, p. 3.  
 to have equal power, authority, and jurisdiction, s. 5, p. 3.  
 to be addressed in manner customary in addressing judges of Superior Cts. of C.L., s. 5, p. 3.  
 office to be vacated by resignation in writing addressed to Ld. Ch., s. 7, p. 5.  
 appointment of judge of H.C., to be judge of C.A., vacates former office, s. 7, p. 5.  
 qualification to be barrister of ten years standing, s. 8, p. 5.  
 after one year as judge of H.C., eligible for appointment as judge of C.A., s. 8, p. 5.  
 on appointment not required to take, nor to have taken degree of Sergeant-at-Law, s. 8, p. 5.  
 those not also judges of C.A. to rank next after judges of C.A., and an order of appointment, s. 10, p. 6.  
 existing judges, appointed judges of H.C., to retain existing rights, and to be subject to existing obligations, s. 11, p. 6.  
 to exercise duties not incident to administration of justice, s. 12, p. 7.  
 salary of, to be £5,000 a year, s. 13, p. 8.  
 pension to be amount now payable to puisne justices of C.B., s. 14, p. 8.  
 salaries, allowances, and pension to be payable out of Consolidated Fund on usual quarter days, s. 15, p. 9.  
 to hold office for life subject to removal on address by both Houses of Parliament, s. 9, p. 5.  
 jurisdiction in criminal cases under Crown Cases Reserved Act, 1848, to be exercised by, s. 47, p. 37.

**JUDGES OF TRANSFERRED COURTS.**

duties, authorities, and powers not incident to administration of justice to be performed by, s. 12, p. 7.  
 Acts of Parliament relating to former Cts. to be read as applying to Cts. under the Act, s. 6, p. 49.

**JUDGE IN CHAMBERS.**

application to, may be made for names of co-partners suing or being sued as a firm, R.P. 11, p. 69.

**JUDGES MARSHALL.**

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**JUDGMENT.—See Attachment of Debts; Pleading (13); Judgment by Default; Execution:**

interpretation of term, s. 100, p. 64.

**JUDGMENT.**—continued.

may be signed on non-appearance of deft., where writ specially endorsed, subject to variation by Ct., R.P. 7, p. 67.

final may be signed after appearance on affidavit, verifying cause of action, unless judge is satisfied that there is a good defence. R.P. 7, p. 67.

on appeal, C.A. to have all powers of H.C., as to, s. 19, p. 12.

counter-claims by deft. may be made in statement of defence, so that Ct. may pronounce R.P. 20, p. 72, see counter-claims.

may be given for deft. for balance under counter-claim, R.P. 21, p. 72.

persons entitled by attachment to enforce, may apply by motion in a summary way to restrain proceedings, s. 24, p. 18.

may be given as to part of action with new trial, as to the other part, R.P. 48, p. 80.

of nonsuit, unless Ct. or judge otherwise directs, to have same effect as judgment upon the merits for deft., R.P. 46, p. 79.

of H.C. or C.A., no appeal from, to House of Lords or Judicial Committee, but appeal still to exist from judgments obtained previous to commencement of Act, s. 20, p. 12.

in pending suits may be given as if Act had not passed, if cause be fully heard, s. 22, p. 14.

perfected, may be executed, enforced, amended, or discharged by H.C. and C.A., s. 22, p. 14.

*How judgment obtained.*

judgment of Ct. shall be obtained by motion for judgment, O. 35, r. 1, p. 259. except when by H. Ct., R.P., or R.C., it is provided that judgment may be obtained in any other manner, O. 35, r. 1, p. 259.

*Motion for judgment*

action shall be set down on motion for judgment where at the trial judge or a referee has ordered that any judgment be entered subject to leave to move, O. 35, r. 2, p. 259.

party to whom leave has been reserved shall set down action, and give notice thereof to the other parties within the time limited by the judge in reserving leave, or if no time has been limited within 10 days after the trial, O. 35, r. 2, p. 259.

notice of motion shall state (a) the ground of the motion, (b) the relief sought, and (c) that the motion is pursuant to leave reserved, O. 35, r. 2, p. 259.

pl. may set down action on motion for judgment when at the trial of an action the judge or referee abstains from directing any judgment to be entered, O. 36, r. 3, p. 259.

any deft. may set down the action on motion for judgment, and give notice thereof to the other parties if pl. does not so set it down, and give notice thereof to the other parties within 10 days of the trial, O. 35, r. 3, p. 259.

*Motion to set aside judgment.*

any party may without any leave reserved move to set aside judgment where at the trial of an action before a jury the judge has directed that any judgment be entered, O. 36, r. 4, p. 259.

any party may move to set aside such judgment, and enter any other judgment on the ground that the judgment directed to be entered is wrong, by reason of the judge having caused the finding to be entered wrongly with reference to the finding of the jury, upon the question or questions submitted to them, O. 36, r. 4, p. 259.

*When issues have been ordered to be tried.*

pl. may set down the action on motion for judgment where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, O. 35, r. 7, p. 260.

pl. may set down action as soon as such issues or questions have been determined, O. 35, r. 7, p. 260.

deft. may set it down and give notice to other parties if pl. does not so set it down and give notice thereof to the other parties within ten days after his right so to do has arisen, O. 35, r. 7, p. 260.



**JUDGMENT—continued.**

application may be made to Ct. or judge for leave to set down action on motion for judgment where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, O. 35, r. 8, p. 260

application may be made by any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, O. 35, r. 8, p. 260

application may be made without waiting for such trial or determination, O. 35, r. 8, p. 261

Ct. or judge may give such leave, if satisfied of the expediency thereof, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact, O. 35, r. 8, p. 261.

***Motion for judgment after one year.***

no action shall be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do, O. 35, r. 9, p. 261

except by leave of Ct. or judge, O. 35, r. 9, p. 261

any party may without any leave reserved move to set aside judgment where at the trial judge or referee has directed that any judgment be entered, O. 35, r. 5, p. 260.

any party may move to set aside judgment, and to enter any other judgment on the ground that upon the findings as entered the judgment so directed is wrong, O. 35, r. 5, p. 260.

on motions to set aside judgments and all motions under sec. 48, the order shall be an order to show cause, and shall be returnable in eight days, O. 35, r. 6, p. 260.

the motion shall be made within four days after the trial, if D.C. is their sitting, or within the first four days after the commencement of the sitting of the D.C. next after the trial or within such extended time as Ct. or judge may allow, O. 35, r. 6, p. 260.

Ct. may give judgment accordingly, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute or any of them, or for awarding any relief sought, O. 35, r. 10, p. 261.

Ct. may direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, O. 34, r. 10, p. 261.

***Interlocutory orders.***

R.C. as to judgments not to apply to interlocutory orders under R.P. 40, O. 35, r. 11, p. 261.

any application for such orders may be made by motion so soon as the right of the party applying to the relief claimed has appeared from the pleadings, O. 35, r. 11, p. 261.

Ct. or judge may give such relief, subject to such terms, if any, as such Ct. or judge may think fit, O. 35, r. 11, p. 261.

***Entry of judgment.***

every judgment shall be entered by the proper officer in the book to be kept for the purpose, O. 36, r. 1, p. 261.

party entering shall deliver to the officer a copy of whole of pleadings in the action, O. 36, r. 1, p. 261.

such copy to be in print, except such parts (if any) of the pleadings as are permitted by R.C. to be written, O. 36, r. 1, p. 262.

entry of judgment to be dated as of the day on which judgment is pronounced when judgment is pronounced by Ct. or judge in Ct., O. 36, r. 2, p. 262

judgment shall take effect from that date, O. 36, r. 2, p. 262

entry of judgment to be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry

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judgment shall take effect from that date, O. 36, r. 3, p. 262  
proper officer shall examine affidavit or document produced where it is provided by H. Ct., R.F., R.C., or otherwise that any judgment may be entered or signed upon the filing of any such affidavit or production of any document, O. 36, r. 4, p. 262  
he shall enter judgment accordingly if the same be regular, and contain all that is by law required, O. 36, r. 4, p. 262  
production of order or certificate sealed with the seal of the Ct., or of a return, shall be sufficient authority to officer to enter judgment accordingly, where by Act R.P., R.C., or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, O. 36, r. 5, p. 262

**JUDICATURE, SUPREME CT. OF**—See Supreme Ct. of Judicature.

**JUDICATURE ACT, 1873**—See Act, Supreme Ct. of Judicature.

**JUDICIAL COMMITTEE OF H.M.'S PRIVY COUNCIL.**

existing salaried judges of, to be some of first ordinary judges of C.A., s. 6, p. 4.

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no appeals to, from H.C. or C.A., from any judgment, subsequent to commencement of Act, s. 20, p. 12.

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**JUDICIAL COMMITTEE ACT, 1871.**

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of married women and ir

**NISI PRIUS, COMMISSIO**

no judge appointed befo

to action on, s. 11, p.

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**NOT****NO**

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 C.A. may direct service of, on all or any parties to action or other proceeding, R.P. 51, p. 80.  
 C.A. may direct service of, on any person not a party, R.P. 51, p. 80.  
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**OATHS.**

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**OBLIGATIONS—See Legal Estates, &c.; Equitable Estates, &c.****OFFICE.**

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an office copy of any affidavit required or ordered to be printed under R.C. shall be a printed copy, O. 50, r. 9, p. 278.  
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Court of Chancery.  
Queen's Bench.  
Common Pleas.  
Exchequer.  
London Court of Bankruptcy. }  
Court of Probate. }  
Court of Divorce. }  
Court of Divorce. }

**DIVISIONS OF H. C.**

Chancery Division.  
Queen's Bench Div.  
Common Pleas Div.  
Exchequer Div.  
Probate, Divorce, and Admiralty Div.

Officers attached to any Div. shall follow the appeals from the same Div., and shall perform in C.A. analogous duties in reference to such appeals as the registrars and officers of Ct. Ch. usually performed as to re-hearings in the C.A. in Ch., and as the masters and officers of the Q.B., C.P., and Ex. respectively performed as to appeals heard by the Ct. of Ex. Chambers, O. 54, r. 2, p. 282.

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power by, to make G.R. as to assessors in Ecclesiastical Causes in C.A., s. 21, p. 13.

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regulating vacations to have force of Act, s. 27, p. 24.

may alter Divs. and number of judges, and abolish distinction of office of certain judges, s. 32, p. 28.

to be laid before Parliament and have force of Act, s. 32, p. 28.

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accounts (c. or j.) at any stage, R.P. 42, p. 77.

action (c. or j.) discontinuance of, R.P. 46, p. 79.

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all or any, jointly and severally liable on any one contract, may be joined, R.P. 16, p. 70.

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provisions in 15 and 16 Vict., c. 86, s. 42 shall be in force in all actions in H.C., subject to Act, R.P. and R.C., O. 15, r. 4, p. 223.

*Marriage, death, or bankruptcy of parties.*—See Pleading.

*Misjoinder.*

no action shall be defeated by reason of the misjoinder of parties, R.P. 9, p. 68.

the Ct. may, in every action deal with the matter in controversy, so far as regards the rights and interests of the parties actually before it, R.P. 9, p. 68.

*Representation of parties.*

where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Ct. to defend in such action on behalf of and for the benefit of all parties so interested, R.P. 10, p. 68.

*Plaintiffs.*

all persons may be joined as pls. in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, O. 15, r. 1, p. 222.

judgment may be given for such one or more of pls. as may be found to be entitled to relief for such relief as he or they may be entitled to, without any amendment, O. 15, r. 1, p. 222.

but the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be so found entitled to relief, unless Ct. in disposing of the costs of the action shall otherwise direct, O. 15, r. 1, p. 222.

persons may be ordered by Ct. or judge to be substituted or added as pls. upon such terms as may seem just (I.) where an action has been commenced in the name of the wrong person as pl., or (II.) where it is doubtful whether it has been commenced in the name of the right pl. or pls. if Ct. or judge satisfied (a) that it has been so commenced through a *bond fide* mistake, and (b) that it is necessary for the determination of the real matter in dispute so to do, O. 15, r. 3, p. 223.

*Defendants.*

pl. may at his option join as parties to the same action all or any of the persons severally or jointly, or jointly and severally, liable on any one action, including parties to bills of exchange and promissory notes, R.P. 16, p. 70.

all persons may be joined as defts. against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, O. 15, r. 2, p. 223.

judgment may be given against such one or more of the defts. as may be found to be liable, according to their respective liabilities, without any amendment, O. 15, r. 2, p. 223.



**PARTIES.—continued.***Third parties.*

Ct. or judge shall have power to grant to any deft. in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief relating to or connected with the original subject of the cause or matter, and claimed against any other person than the pl., whether already a party to the same cause or matter or not who shall have been duly served with notice in writing of such claim pursuant to any R.C. or any order of the Ct. as might properly have been granted against such person if he had been made a deft. to a cause instituted by the same deft. for the like purpose, s. 24, p. 17.

every person served with notice shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his defence against such claim as if he had been duly served in the ordinary way by such deft., s. 24, p. 17.

Ct. or judge may (on notice being given in such manner and form as prescribed by R.C.) make such order as may be proper for having question determined (a), where a deft. is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or (b), where from any other cause it appears to the Ct. or judge, that the question in the action, should be determined, not only as between pl. and deft., but as between pl., deft., and any other person, or between any or either of them, R.P. 12, p. 63.

Ct. or judge before or at the time of making order for having question determined, shall direct such notice to be given by pl. at such time and to such person as may be thought proper, O. 15, r. 10, p. 224.

if made at the trial, the judge may postpone trial as he may think fit, O. 15, r. 10, p. 224.

deft. may, by leave, issue a notice that he claims to be entitled to contribution, indemnity, or other remedy, or relief over against a person not a party, O. 15, r. 9, p. 224.

notice to be stamped with seal with which writs are sealed, O. 15, r. 9, p. 224.

copy of notice to be (a) filed with proper officer, and (b) served on such person according to the rules relating to the service of writs of summons, O. 15, r. 9, p. 224.

notice to state nature and grounds of claim, O. 15, r. 9, p. 224.

notice to be served within time limited for delivering statement of defence (unless otherwise ordered), O. 15, r. 9, p. 224.

form or notice provided for, O. 15, r. 9, p. 224.—The form Schedule B, form 1, p. 300.

copy of statement of claim, or if no statement of claim, then copy of writ to be served with the notice, O. 15, r. 9, p. 224.

if party served desires to dispute pl.'s claim as against deft. on whose behalf notice has been given, he must enter appearance in action within 8 days from service of notice, O. 15, r. 11, p. 224.

in default he shall be deemed to admit validity of judgment obtained against such deft., whether obtained by consent or otherwise, O. 15, r. 11, p. 225.

falling to appear within 8 days, he may, however, apply to Ct. or judge for leave to appear, and leave may be given upon such terms, if any, as Ct. or judge shall think fit, O. 15, r. 11, p. 225.

if third party appears pursuant to notice, party giving notice may apply to Ct. or judge for directions as to mode of having question in action determined, O. 15, r. 12, p. 225.

Ct. or judge, on hearing such applications (a), may, if it shall appear desirable so to do, give the person so served liberty to defend action upon such terms as shall seem just, and (b) may direct such pleadings to be delivered, or (bb) such amendments in any pleadings to be made, and (c) generally may direct such proceedings to be taken, and give such directions as to Ct. or judge shall appear proper for having ques-

**PARTIES.**—continued.

tion most conveniently determined, and (d) as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question, O. 15, r. 12, p. 225.

*In probate actions.*

rules heretofore in use in Ct. of Probate to continue in force, subject to act, R.P. and R.C., O. 15, r. 5, p. 223.

*In case of lunatics.*

lunatics and persons of unsound mind not so found may (a) sue as pls. by committee or next friend, or (b) defend by committee or guardians appointed for that purpose, in manner practised in Ct. Ch., in all cases in which they might have done so previous to act, O. 17, p. 226.

no person shall be added as a pl. suing without a next friend or as the next friend of a pl. under disability without his own consent thereto, R.P. 9, p. 68.

*Married women.*

may sue as pls. by their next friend in manner practised in Ct. Ch. before passing of act, s. 15, p. 70.

by leave of Ct. or a judge may sue or defend without their husbands, and without a next friend, on giving such security, if any, as Ct. or judge may require, s. 15, p. 70.

*Infants.*

may (a) sue as pls. by next friend, and (b) defend by their guardians appointed for that purpose, in manner practised in Ct. Ch. before passing of act, s. 15, p. 70.

*Partners.*

any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms (if any), R.P. 11, p. 69.

any party to an action may apply by summons to a judge in chambers for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner and verified on oath or otherwise as the judge may direct, R.P., 11, p. 69.

*Trustees, executors and administrators.*

may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action, R.P. 14, p. 69.

Ct. or judge may at any stage of the proceedings order any of parties beneficially interested to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto, R.P., 14, p. 69.

*Addition, striking out, and substitution of parties.*

Ct. or judge may order (a) that the name or names of any party or parties, whether as pls. or dfts. (a) improperly joined be struck out and (b) that the name or names of any party or parties, whether pls. or dfts., who ought to have been joined, (c) or whose presence before the Ct. may be necessary in order to enable the Ct. effectually and completely to adjudicate upon and settle all the questions involved in the action, be added, R.P. 9, p. 68.

order may be made at any stage of the proceedings, R.P. 9, p. 68.

order may be made either (I.) upon, or (I.I.) without the application of either party, R.P. 9, p. 68.

order may be made in the manner prescribed by R.C., R.P. 9, p. 68.

order may be made on such terms as may appear to Ct. or judge to be just, R.P. 9, p. 68.

no person shall be added as a pl. suing without a next friend, or as the next friend of a pl., under any disability, without his own consent thereto, R.P. 9, p. 68.

all persons added as dfts. shall be served with a summons or notice, in such manner as may be prescribed by R.C., or by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice, R.P. 9, p. 68.

application may be made to Ct. or judge at any time before trial by motion or summons, or at the trial of action in a summary manner, O. 15, r. 6, p. 223.

**PARTIES.**—continued.

where defendant is added, unless otherwise ordered, pl. (I.) to file amended copy of, and sue out a writ of summons and serve such new dft. with such writ or notice in same manner as original dfts. are served, O. 15, r. 7, p. 223, and (II.) if statement of claim has been delivered, same to be amended in such manner as making such new defendant a party shall render desirable (unless otherwise ordered), and (III.) copy of amended statement of claim to be delivered to new dft. at time when he is served with writ or notice or afterwards within four days after his appearance, O. 15, r. 8, p. 223.

**PARTS OF JUDICATURE ACT.**

- Part 1. of Judicature Act, 1873, s. 5-15, "Constitution and Judges of Supreme Court," pp. 2-9.
- " 2. of Judicature Act, 1873, s. 16-25, "Jurisdiction and Law," pp. 9-23.
- " 3. of Judicature Act, 1873, s. 26-55, "Sittings and Distribution of Business," pp. 23-40.
- " 4. of Judicature Act, 1873, s. 56-76, "Trials and Procedure," pp. 40-50.
- " 5. of Judicature Act, 1873, s. 77-87, "Officers and Offices," pp. 50-59.
- " 6. of Judicature Act, 1873, s. 88-91, "Jurisdiction of Inferior Courts," pp. 59-60.
- " 7. of Judicature Act, 1873, s. 92-100, "Miscellaneous Provisions," pp. 60-64.

**PARTITION.**

causes as to, of real estates, assigned to C. Div., s. 34, p. 30.

**PARTNERS**—See also Co-partners.

may sue or be sued in name of firm, R.P. 11, p. 68.

judge may direct names of co-partners suing or being sued in name of firm to be furnished, R.P. 11, p. 69.

**PARTNERSHIPS.**

matters referring to dissolution of, and taking partnerships, accounts assigned to C. Div., s. 34, p. 29.

**PARTNERSHIP ACCOUNTS.**

writ of summons to be endorsed with a claim that pl. requires an account in cases of ordinary, R.P. 8, p. 67.

**PASSING.**

of Judicature Act, 1873—5th August, 1873 (title),—p. 1.

**PATENT**—See Letters Patent.

**PATRONAGE.**

of existing judges, appointed judges of H.C., ordinary judges of C.A., to remain as if Act had not been passed, s. 11, p. 6.

power to abolish, by order in council in certain cases, s. 32, p. 28.

exercise of, where not specially provided for, s. 86, p. 58.

**PAYMENT.**

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of disputed chose in action into H.C. under Trustee Relief Acts, s. 25, p. 21.

**PAYMENT INTO COURT IN SATISFACTION.**

any dft. may pay into Ct. a sum of money by way of satisfaction or amends in respect of cause of action, where action is brought for a debt or pecuniary damages, O. 27, r. 1, p. 244.

dft. may pay into Ct. at any time after service of the writ, and before, or at the time of delivering his defence, O. 27, r. 1, p. 244.

by leave of Ct. or judge, dft. may pay into Ct. at any later time, O. 27, r. 1, p. 244.

payment into Ct. shall be pleaded in defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein, O. 27, r. 1, p. 244.

such sum of money shall be paid to the proper officer, O. 27, r. 2, p. 244.

proper officer shall give receipt for same, O. 27, r. 2, p. 244.

dft. shall serve upon pl. a notice that he has paid in money, and in respect of what claim, if such payment be made before delivering his defence, O. 27, r. 2, p. 244.

term of notice provided for, O. 27, r. 2, p. 244.

**PAYMENT INTO COURT IN SATISFACTION.—continued.**

- the form, Schedule B, form 5, p. 301.
- money paid into Ct. shall be paid out to pl. or to his solicitor, on written authority of pl., O. 27, r. 3, p. 244.
- no affidavit shall be necessary to verify the pls. signature to such written authority, unless specially required by the officer of the Ct., O. 27, r. 3, p. 244.
- pl. may accept the money paid into Ct. in satisfaction of the causes of action in respect of which it is paid in, O. 27, r. 4, p. 244.
- provided payment into Ct. is made before delivering a defence, O. 27, r. 4, p. 244.
- pl. must accept same within 4 days after receipt of notice of such payment, O. 27, r. 4, p. 244.
- if payment is first stated in a defence delivered, then pl. may accept before reply, O. 27, r. 4, p. 245.
- pl. shall give notice to deft. of acceptance, O. 27, r. 4, p. 245.
- form of notice provided for, O. 27, r. 4, p. 245.
- the form Schedule B., form 6, p. 352.
- pl. shall be at liberty (if sum paid in is accepted in satisfaction of entire cause of action) to tax his costs, and in case of non-payment within 48 hours, to sign judgment for his costs so taxed, O. 27, r. 4, p. 245.

**PEERS.**

- when ordinary or additional judges of C.A. to rank in Supreme Ct. in order of present precedence, s. 10, p. 6.

**PENDING BUSINESS.**

- pending writs of error, or appeal, may be prosecuted to House of Lords, or to H.M. in Council, or to Judicial Committee of P.C., s. 20, p. 12.
- error or appeal may be brought to same Cts. if judgment or order obtained previous to commencement of Act, s. 20, p. 12.
- transfer of, provided for viz. :—proceedings fully heard, but in which judgment not perfected to be perfected by the old judges, but when judgment perfected new Cts. and judges to have jurisdiction, pending proceedings in error, or on appeal, to be continued by C.A., other proceedings by H.C., s. 22, p. 14.
- form of procedure, whether of old or new Cts., to be determined upon by Cts. as to, continued by H.C. and C.A., s. 22, p. 15.
- in Ct. Ch. assigned to C. Div., s. 34, p. 29.
- in Q.B. (whether civil or criminal), assigned to Q.B. Div., s. 34, p. 30.
- in C.P. the Ct. of C.P. at Lancaster, and C.P. at Durham, assigned to C.P. Div., s. 34, p. 30.
- in Ex. and London Ct. of Bankruptcy, assigned to Ex. Div., s. 34, p. 30.
- in Ct. of Probate, Ct. for Divorce and Matrimonial causes, and in H.C. of Admiralty, assigned to P.D. and A. Div., s. 34, p. 31.

**PENSION.**

- interpretation of term, s. 100, p. 64.
- of existing judges, appointed judges of H.C. or ordinary judges of C.A., to remain as if Act had not passed, s. 11, p. 6.
- of existing judges becoming judges in H.C. or C.A., time to count in latter capacity, s. 11, p. 7.
- of existing judges to be included in salaries payable under Act, s. 13, p. 7.
- of additional judges not to be affected by Act, s. 13, p. 8.
- of future judges of H.C. and of ordinary judges of C.A. to be amount now granted to puisne justices of Q.B., s. 14, p. 8.
- of L.C.J. of England, M.R., L.C.J. of C.P. and L.C.B., to be amount now payable to, s. 14, p. 8.
- to be paid out of consolidated fund on usual quarter days, s. 15, pp. 8-9.
- officer attached to a judge not entitled to, unless entitled thereto independently of Act, s. 85, p. 57.
- officers transferred to Supreme Ct. to be entitled to same pension, s. 77, p. 51.
- power to abolish, on vacancy of certain offices, s. 32, p. 28.

**PENSION.**—continued.

of officers appointed in pursuance of Part V. of Judicature Act, 1873. whose whole time shall be devoted to duties of his office, to be entitled to pension payable to permanent civil servants of H.M., s. 85, pp. 57-58.

**PERFORMANCE (SPECIFIC).**

causes as to, of contracts between vendor and purchaser (including contracts for leases). assigned to C. Div., s. 34, p. 29.

**PERISHABLE GOODS.**

power to make order for sale of, R.P. 44, p. 78.

**PERMANENT.**

infirmary to entitle judges of H.C. and ordinary judges of C.A. to pension, s. 14, p. 8.

**PERSONS.**

interpretation of term 'person' in R.C., O. 57, p. 285.

of idiots and lunatics, jurisdiction as to custody of, not transferred to H.C., s. 17, p. 10.

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may be made party to action or served with notice in case of death of any of the parties to an action, R.P. 17, p. 70.

claims by, against insolvent estates, s. 25, p. 19.

**PERSONAL SERVICE**—See Writ of Summons.**PETITION.**

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**PETITIONER.**

interpretation of term, s. 100, p. 63.

claiming any equitable estate or right to have same relief as ought to have been given by Ct. Ch., s. 24, p. 16.

**PETITIONS.**

elections, rota of judges for, s. 38, p. 33.

to H.M. in council may be transferred to C.A. by order in council, s. 21, p. 12.

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any proceeding between, and deft. included in term cause, s. 100, p. 63.

interpretation of term, s. 100, p. 63.

when improperly joined may be struck out, R.P. 9, p. 68.

may be added but when added must be served with summons or notice, R.P. 9, p. 68.

may join two or more defts. where he is in doubt as to persons from whom he is entitled to redress, R.P. 13, p. 69.

may join all or any parties severally or jointly, and severally liable on one contract, R.P. 16, p. 70.

may give notice of trial by any mode, R.P. 31, p. 75, see Trial; Notice.

to file and deliver to deft. printed statement of complaint, unless deft. at appearance states he does not require it, R.P. 18, p. 71, see Statement of Complaint.

deft. to file and deliver to, printed statement of defence, set-off, or counter-claim, R.P. 18, p. 71, see Statement of Defence.

to file and deliver to deft. printed statement of reply, R.P. 18, p. 71.

counter-claims by deft., R.P. 20, p. 72, see Counter-claim.

may unite several causes of action in same statement, R.P. 22, p. 72.

may exhibit interrogatories to deft. and obtain discovery, R.P. 25, p. 73.

may name place of trial in statement, R.P. 23, p. 74, see Trial.

claiming equitable estate or right, to be entitled to such and same relief as ought to have been given by Ct. Ch., s. 24, p. 16.

may choose in which Div. he will sue, s. 35, p. 31.

**PLEADING.**

interpretation of term, s. 100, p. 63.

## PLEADING continued.

new rules of pleading substituted for those heretofore used in Ct. Ch., and in Cts. of Common Law, Admiralty and Probate, R.P. 18, p. 71.

viz. :—as to

1. pl.'s printed statement of complaint, R.P. 18, p. 71.
  2. defts. printed statement of defence, set-off, or counter-claim, R.P. 18, p. 71.
  3. pl.'s printed statement of reply, R.P. 18, p. 71.
  4. demurrer to any statement, R.P. 18, p. 71.
  5. amendment of any statements, R.P. 18, p. 71.
  6. issues, their preparation by parties, and settlement by judge, R.P. 19, p. 71.
  7. counter-claim by defendant, R.P. 20, p. 72.
  8. judgment to deft. for balance of counter-claim, R.P. 21, p. 72.
  9. joinder of several causes of action, R.P. 22-23, p. 72.
  10. preliminary questions of law to be raised by Ct., R.P. 24, p. 72.
- if pleadings disclose documents, same to be produced on notice, R.P. 26, pp. 73-74.

**PLEADING.**—The reference on this subject are thus sub-divided :—(1.) generally ; (2.) Statement of Claim ; (3.) Statement of Defence, set off Counter claim ; (4.) Statement of reply ; (5.) Amendment of pleadings ; (6.) Demurrer ; (7.) Marriage, death, or Bankruptcy of parties ; (8.) Denial of facts in pleadings ; (9.) Mode of pleading special pleas ; (10.) Pleading matters arising pending the action ; (11.) The Probate and Admiralty ; (12.) Joinder of issue and close of pleadings ; (13.) Default of pleading.

**PLEADING (1.) GENERALLY.**—See also Joinder of Causes of Action ; Parties.

the rules of pleading in the Schedule to the Judicature Act, 1873, to be substituted for those heretofore used in Ct. Ch., and in Cts. of Common Law, Admiralty, and Probate, R.P. 18, p. 71.

where an action proceeds in a district requesting all pleadings and other documents required to be filed shall be filed in the district registry, O. 18, r. 26, p. 231.

statements shall be as brief as the nature of the case will admit, R.P. 18, p. 71.

the Ct. in adjusting the costs of the action shall enquire at the instance of any party into any unnecessary prolixity, and order the costs of such prolixity to be borne by the party chargeable with the same, R.P. 18, p. 71.

every pleading shall contain, as concisely as may be, a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, O. 18, r. 1, p. 227.

statements to be divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation, O. 18, r. 1, p. 227.

dates, sums, and numbers shall be expressed in figures and not in words, O. 18, r. 1, p. 227.

signatures of counsel shall not be necessary, O. 18, r. 1, p. 227.

every pleading may be either printed or written if it shall contain less than 3 folios of 72 words each (every figure being counted as one word, O. 18, r. 2, p. 227).

every pleading shall be printed if it do not contain less than 3 folios of 72 words each (every figure being counted as one word), O. 18, r. 1, p. 227.

every pleading shall be delivered between parties, O. 18, r. 4, p. 227.

every pleading or other document required to be delivered to a party or between parties shall be delivered in the manner now in use to the solicitor of every party, who appears by a solicitor, or to the party if he does not appear by solicitor, O. 18, r. 3, p. 227.

If no appearance has been entered for any party every pleading or other document required to be delivered to a party, or between parties, shall be delivered by being filed with the proper officer, O. 18, r. 3, p. 227.

every pleading shall be marked on the face with

(a) the day of the date on which it is delivered.

(b) the reference to the letter and number of the action.

## PLEADING—continued.

- (c) the division to which the action is assigned.
  - (cc) the judge (if any) to which the action is assigned.
  - (d) the title of the action.
  - (e) the description of the pleading.
  - (f) the name and place of business of the solicitor and agent (if any) delivering the same, or
  - (ff) the name and address of the party delivering the same, if he does not act by a solicitor, O. 18, r. 4, p. 227.
- neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has been first specifically denied, O. 18, r. 22, p. 231.

[e.g. consideration for bill of exchange where pl. sues only on bill and not for consideration as a substantive ground of claim, O. 18, r. 25, p. 231.]

denial to be specific if either party wishes to deny the right of any other party to claim as (a) executor, (b) trustee, whether in bankruptcy or otherwise, (c) or in any representation, or (d) other alleged capacity, (e) or the alleged constitution of any partnership firm, O. 18, r. 8, p. 228.

no plea or defence shall be pleaded in abatement, O. 18, r. 10, p. 225.

general denial (a) by deft. in his defence of facts alleged by statement of claim (b) or by a pl. in his reply of facts alleged in a defence by way of counter claim not to be sufficient but, each party must deal specifically with each allegation of fact of which he does not admit the truth, O. 18, r. 17, p. 229.

every allegation of fact shall be taken to be admitted (except as against an infant lunatic or person of unsound mind), if not denied (a) specifically, (b) by necessary implication, or stated to be not admitted in the pleading of the opposite party, O. 18, r. 14, p. 229.

each party in any pleading must

1. allege all such facts not appearing in the previous pleadings as he means to rely on.

2. raise all such grounds of defence or reply as the case may be as if not raised on the pleadings (a) would be likely to take the opposite party by surprise, or (b) would raise new issues of fact not arising out the pleadings. [e.g. fraud; barred by the statute of limitations; released] O. 18, r. 15, p. 229.

no new ground of claim to be raised in any pleading except by way of amendment, O. 18, r. 16, p. 229.

no allegation of fact inconsistent with previous pleadings of party filing same to be contained in any pleading, O. 18, r. 16, p. 229.

*Admission of facts.*

every allegation of fact in any pleading shall be taken as admitted (except as against infants, lunatics, and persons of unsound mind not so found) if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, O. 18, r. 14, p. 229.

joinder of issue may, except any facts which the party may be willing to admit, O. 18, r. 18, p. 230.

*Assignment, creation, or devolution.*

in case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved, R.F. 17, p. 70.—See also above. "Marriage, death, or bankruptcy."

*New Assignment.*

no new assignment shall hereafter be necessary or used, O. 18, r. 11, p. 228, everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim, O. 18, r. 11, p. 228.

## PLEADING.—(3) STATEMENT OF CLAIMS.—See also Pleading (Generally);

Amendment of Pleadings; Demurrer.

pl. shall within such time, and in such manner as shall be prescribed by R.O., file and deliver to the deft., after his appearance, a printed statement of

**PLEADING—(2) STATEMENT OF CLAIMS.—continued.**

complaint, and of the relief or remedy to which he claims to be entitled, R. P. 18, p. 71.

unless the deft. at the time of his appearance shall state that he does not require the delivery of a statement of complaint, R. P. 18, p. 71.  
every statement of claim shall state (I.) specifically the relief which pl. claims (a) either simply or (b) alternatively, and (II.) may also ask for general relief, O. 18, r. 5, p. 228.

if pl.'s claim be for discovery only, the statement of claim shall show it, O. 18, r. 5, p. 228.

where pl. seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly, O. 18, r. 6, p. 228.

when pl. proposes to have action tried elsewhere than in Middlesex he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, R. P. 23, p. 74.—See Trial.

**Time of Delivery.**

pl. to deliver statement of claim within 6 weeks from time of deft.'s entering his appearance, O. 20, r. 1a., p. 233.

if deft. shall not state that he does not require the delivery, O. 20, r. 1a, p. 233.

unless otherwise ordered by Ct. or Judge, O. 20, r. 1a., p. 223.

pl. may, if he think fit, deliver a statement of claim with the writ or notice (a) at any time after the issue of the writ of summons, or (b) at any time afterwards, either before or after appearance, and (c), although the deft. may have appeared and stated that he does not require the delivery of a statement of claim, O. 20, r. 1b. p. 233.

in no case shall a statement be delivered more than 6 weeks after the appearance has been entered, O. 20, r. 1b. p. 234.

unless otherwise ordered by the Ct. or Judge, O. 20, r. 1b. p. 234.

when a pl. delivers a statement of claim without being required to do so, Ct. or Judge may make such order as to costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper, O. 20, r. 1c. p. 234.

**In Probate Actions (time of delivery).**

pl. shall deliver his statement of claim within 6 weeks (a) from the entry of appearance, or (b) from time limited for appearance in case deft. has made default, O. 20, r. 2. p. 234.

unless otherwise ordered by Ct. or Judge, O. 20, r. 2. p. 234.

pl. shall not be compelled to deliver statement of claim until 8 days after deft. has filed his affidavits as to scripts, where deft. has appeared, O. 20, r. 2. p. 234.

**In Admiralty Actions in rem (time of delivery).**

pl. shall deliver his statement of claim within 12 days from the appearance of the deft., O. 20, r. 3. p. 234.

**In specially endorsed writs.**

a notice to the effect that pl.'s claim is that which appears by the indorsement upon the writ to be sufficient delivery of statement, O. 20, r. 4, p. 234.

unless Ct. or judge shall order pl. to deliver a further statement, O. 20, r. 4, p. 234.

such further statement to be delivered within such time as by such order shall be directed, and if no time be so limited, then within time limited for ordinary statement of claim, O. 20, r. 4, p. 234.—See Time of Delivery *supra*.

notice unnecessary if pl. has dispensed with statement, O. 20, r. 4, p. 234.  
notice may be either written or printed, or partly written and partly printed, O. 20, r. 4, p. 234.

form prescribed, O. 20, r. 4, p. 234.

the form Schedule B, form 3. p. 301.

notice to be marked on the face in the same manner as is required in the case of an ordinary statement of claim, O. 20, r. 4, p. 234.—See Pleading Generally.



**PLEADING.—(3) STATEMENT OF DEFENCE, SET OFF OR COUNTER CLAIMS.—**  
See also Pleading (1) Generally; Pleading (5) Amendment; Pleading (6) Demurrer.

a printed statement of defence, set off, or counter claim, shall be filed and delivered by deft. to pl. within such time, and in such manner as shall be prescribed by R.C., R.P. 18, p. 71.

a pl. may set off or set up by way of counter claim against the claims of the pl. any right or claim, R.P. 20, p. 72.

such set off or counter claim may sound in damages or not, R.P. 20, p. 72.

such set off or counter claim shall have the same effect as a statement of claim in a cross action, so as to enable the Ct. to pronounce a final judgment in the same action both on the original and on the cross claim, R.P. 20, p. 72.

every deft. to any action need not be interested (a) as to all the relief thereby prayed for, or (b) as to every cause of action included therein, R.P. 23, p. 72.

Ct. or judge may make such order as may appear just to prevent any deft. (a) from being embarrassed, or (b) put to expense by being required to attend any proceedings in such action in which he may have no interest, R.P. 23, p. 72.

every statement of counter claim, or relief claimed by the deft. in his statement of defence shall state (I) specifically the relief which he claims either (a) simply or (b) in the alternative, and (II) may also ask for general relief, O. 18, r. 5, p. 228.

when the deft. relies upon several distinct grounds of defence, set off or counter claim founded upon separate and distinct facts they shall be stated as far as may be separately and distinctly, O. 18, r. 6, p. 228.

where any deft. seeks to rely upon any facts as supporting a right of set off or counter claim he shall state specifically that he does so by way of set off or counter claim, O. 18, r. 7, p. 228.

deft. in possession by himself, or his tenant in action for recovery of land need not plead his title, but it shall be sufficient to state by way of defence that he is so in possession, O. 18, r. 12, p. 229.

unless his defence depends on an equitable estate or right, or he claims relief upon and equitable ground against any right or title asserted by the pl., O. 18, r. 12, p. 229.

he may nevertheless rely upon any ground of defence which he can prove, O. 18, r. 12, p. 229.

"not guilty by statute" may be pleaded by any deft., notwithstanding anything in R.C., O. 18, r. 13, p. 229.

the plea to have same effect as heretofore, O. 18, r. 13, p. 229.

when pleaded, no other defence to be pleaded without leave of Ct. or judge, O. 18, r. 13, p. 229.

denial generally by defendant in his defence of facts alleged by statement of claim not to be sufficient, O. 18, r. 17, p. 229.

facts not deemed specifically or by implication, or stated not to be admitted to be taken as admitted (except as against infants, lunatics, and persons of unsound mind not so found), O. 18, r. 14, p. 229.

each allegation of fact, if not admitted, must be dealt with specifically, O. 18, r. 17, p. 230.

**Judgment for balance under counter claim.**

when in any action a set off or counter claim is established as a defence against pl.'s claim, the Ct. may if the balance is in favour of deft. (a) give judgment for the deft. for such balance, or (b) may otherwise adjudge to the deft. such relief as he may be entitled to upon the merits of the case, R.P. 21, p. 72.

**Time for delivery of defence.**

when statement of claim is delivered within eight days from such delivery or from time limited for appearance whichever shall be last, O. 21, r. 1, p. 235, unless such term is extended by Ct. or judge, O. 21, r. 1, p. 235.

where deft. has appeared, and stated he does not require delivery of statement of claim, and to whom such a statement is not delivered at any time within eight days after his appearance, O. 21, r. 2, p. 235.

**PLEADING—(3) STATEMENT OF DEFENCE.—continued.**

unless such time is extended by Ct. or judge, O. 21, r. 2, p. 235.  
 when leave has been given to a deft. to defend under R.P. 7—(a) within such time as shall be limited by order giving leave, or (b) if no time is thereby limited then within eight days after order, O. 21, r. 3, p. 235.

**Extra costs.**

occasioned by allegations of fact having been denied or not admitted, which Ct. or judge shall be of opinion ought to have been admitted, to be subject to such order of Ct. as shall be just, O. 21, r. 4, p. 235.

**Third parties.**

deft. shall add to the title of his defence a further title where he sets up any counter claim which raises questions between himself and the pl. along with any other person or persons, O. 21, r. 5, p. 235.

further title to be similar to the title in a statement of complaint, O. 21, r. 5, p. 235.

further title to set forth the names of all the persons who, if such counter claim were to be enforced by cross action would be defts. to such cross action, O. 21, r. 5, p. 235.

deft. shall deliver his defence to such of them as are parties to the action, within the period within which he is required to deliver it to the pl., O. 21, r. 5, p. 235.

where any such person is not a party to the action he shall be summoned to appear by being served with a copy of defence, O. 21, r. 6, p. 236.

such service shall be regulated by the same rules as are prescribed with respect to writ of summons, O. 21, r. 6, p. 236.

every defence so served shall be endorsed, O. 21, r. 6, p. 236.

form prescribed, O. 21, r. 6, p. 236.

the form schedule B, form 4 p. 301.

appearance by any person not a deft. to the action who is served with defence, and counter claim must appear then as if he had been served with a writ of summons to appear in an action, O. 21, r. 7, p. 236.

a reply by any person named in a defence as a party to a counter claim thereby made, may be delivered within the time within which he might deliver a defence if it were a statement of claim, O. 21, r. 8, p. 236.

**Order to exclude counter claim**

on the application of the pl. before trial, Ct. or judge may refuse permission to deft. to avail himself of a set off or counter claim, if in opinion of Ct. or judge (a) such set off or counter claim cannot be conveniently disposed of in pending action, or (b) ought not to be allowed, R.P. 20, p. 72.

application may be made to Ct. or judge for an order that a counter claim set up by a deft. in his statement of defence may be excluded, O. 21, r. 9, p. 236.

such application may be made at any time before reply, by the pl. or any other person named as party to such counter claim, O. 21, r. 9, p. 236.  
 grounds of application to be that the claim raised by counter claim ought not to be disposed of by way of counter claim, but in an independent action, O. 21, r. 9, p. 236.

Ct. or judge may on the hearing of the application make such order as shall be just, O. 21, r. 9, p. 236.

**In probate actions.**

the party opposing a will may with his defence give notice to the party setting up the will, (a) that he merely insists upon the will being proved in solemn form of law, (b) and only intends to cross-examine the witnesses produced in support of the will, O. 21, r. 10, p. 236.

he may thereupon be at liberty to do so, O. 21, r. 10, p. 236.

he shall be subject to the same liabilities in respect of costs, as he would have been under similar circumstances according to the practice of the Ct. of Probate, O. 21, r. 10, p. 236.

**PLEADING.—(4) STATEMENT OF REPLY.—See also Pleading (1) Generally; Pleading (5) Amendment.**

the pl. shall, in such manner as may be prescribed by R.C., file and deliver a printed statement of his reply, if any, to the defence, set off, or counter claim of deft., R.P. 18, p. 71.

**PLEADING—(4) STATEMENT OF REPLY.—continued.**

denial generally by a pl. in his reply of the facts alleged in a defence by way of counter claim not to be deemed sufficient, O. 18, r. 17, p. 229.

each allegation of fact, if not admitted, must be dealt with specifically, O. 18, r. 17, p. 230.

facts not denied specifically or by necessary implication, or stated to be not admitted to be taken to be admitted, except as against infants, lunatics, or persons of unsound mind not so found, O. 18, r. 14, p. 229. pl. shall deliver his reply, if any, within 3 weeks after the defence or the last of the defences shall have been delivered, O. 22, r. 1, p. 236.

unless the time shall be extended by the Ct. or judge, O. 22, r. 1, p. 237.

no pleading subsequent to reply shall be pleaded, O. 22, r. 2, p. 237.

except joinder of issue, O. 22, r. 2, p. 237.

except by leave of Ct. or judge, O. 22, r. 2, p. 237.

every pleading subsequent to reply shall be delivered within 4 days after delivery of the previous pleading, unless time shall be extended by Ct. or judge, O. 22, r. 3, p. 237.

**PLEADINGS.—(5) AMENDMENT OF PLEADINGS.**

Ct. or judge may at any stage of the proceedings allow either party to alter his statement of claim or defence, or reply, R.P. 18, p. 71.

Ct. or Judge may at any stage of the proceedings order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, R.P. 18, p. 71.

All such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties, R.P. 18, p. 71.

***Amendment without leave, and counter amendments thereon.***

pl. may without any leave amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, O. 24, r. 1, p. 237.

where no defence is delivered, such amendment may be made at any time before the expiration of four weeks from the appearance of the deft., who shall have last appeared, O. 24, r. 1, p. 237.

deft. who has set up in his defence any set-off or counter claim may without any leave amend such set-off or counter claim at any time before expiration of time allowed him for pleading in reply and before pleading thereto, O. 24, r. 2, p. 237.

in case there be no reply, such amendment may be at any time before the expiration of 28 days from the filing of his defence, O. 24, r. 2, p. 237.

application may be made to Ct. or judge by opposite party to disallow the amendment of pleading without leave, or any part thereof, O. 24, r. 3, p. 237.

application to be made within eight days after delivery to him of the amended pleading, O. 24, r. 3, p. 237.

Ct. or judge (if satisfied that the justice of the case requires it may (a) disallow the same or (b) allow it, subject to such terms as to costs or otherwise as may seem just, O. 24, r. 3, p. 238.

application may be made to Ct. or judge by the other party for leave to plead or amend his former pleading, where any party has amended his pleading, O. 24, r. 4, p. 238.

leave to amend to be given within such time and upon such terms as may seem just, O. 24, r. 4, p. 238.

***Other amendments.***

application for leave to amend any pleading (except those amendable without leave) may be made by either party (a) to Ct., or (b) judge at chambers, or (c) to the judge at the trial of the action O. 24, r. 5, p. 238.

such amendment may be allowed upon such terms as to costs or otherwise as may seem just, O. 24, r. 5, p. 238.

order obtained for leave to amend a pleading shall become ipso facto, void (a) if amendments is not made within the time limited for that purpose by the order, or (b) if no time is limited then if amendment is made within 14 days from the date of this order, O. 24, r. 6, p. 238.

**PLEADING.—(5) AMENDMENT OF PLEADINGS.—Continued.**

unless the time is extended by the Ct. or judge, O. 24, r. 6, p. 238.  
 pleading not be amended while a demurrer to whole or part of pleading is pending, O. 25, r. 7, p. 240.  
 unless by order of Ct. or judge, O. 25, r. 7, p. 240.  
 no such order shall be made, except on payment of costs of demurrer, O. 25, r. 7, p. 240.

**When to be printed.**

amendment must be made by delivering a print of the pleading as amended  
 (a) if more than 144 words be required to be inserted in any one place, or  
 (b) if amendments are so numerous, or of such a nature that the making them in writing would render the pleading difficult, or inconvenient to read, O. 24, r. 7, p. 238.

in other cases a pleading may be amended by written alterations in the pleading which has been delivered and by additions on paper, to be interleaved therewith if necessary, O. 24, r. 7, p. 238.

**Marking of amended pleadings.**

to be marked (a) with date or order (if any) under which same is so amended and (b) of the day on which such amendment is made, O. 24, r. 8, p. 238.  
 Date of amendment to be marked "Amended day of," O. 24, r. 8 p. 239

**Delivery of amended pleadings.**

To be delivered within the time allowed for amending the same, O. 24, r. 8 p. 239.

**PLEADINGS.—(6) DEMURRER.**

a demurrer to any statement may be filed in such manner and form as may be prescribed by R. C., R. F. 18, p. 71.

any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter claim, or reply, or as the case may be, O. 25, r. 1, p. 239.

demurrer may be on the ground that the facts alleged therein do not show any cause of action or ground of defence to a claim, or any part thereof, or set-off, or counter claim, or reply, or as the case may be, to which effect can be given by the Ct. as against the party demurring, O. 25 r. 1, p. 239.

**Form of demurrer.**

demurrer shall state

1. specifically whether it is to the whole or to a part, and if so, to what part of the pleading of the opposite party.

2. some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated, O. 25, r. 2, p. 239.

form of demurrer provided for, O. 25, rule 2, p. 239. The form Schedule C. form 1, p. 304.

demurrer may be set aside by Ct. or judge with costs if (a) there is no ground, or (b) only a frivolous ground of demurrer stated, O. 25, r. 2, p. 239.

**Delivery.**

to be in the same manner and within the same time as any other pleading in the action, O. 25 r. 3 p. 239.

**Pleading combined with demurrer.**

demurrer and defence shall be combined in one pleading if deft. desires to demur to part of statement of claim, and to put in defence to the other part, O. 25, r. 4, p. 239.

demurrer and other pleading shall be combined in one pleading if a party entitled to put in a further pleading desires to demur to part of last pleading of the opposite party, O. 25, r. 4, p. 239.

application to Ct. or judge for an order for leave to plead as well as demur to the matter demurred to, may be made before demurring if party demurring desires, O. 25 r. 5, p. 240.

Ct. or judge if satisfied that there is reasonable ground for the demurrer may (a) make an order accordingly, or (b) may reserve leave to him to plead after the demurrer is overruled, or (c) may make such other order and upon such terms as may be just, O. 25, r. 5, p. 240.

**PLEADING.—(6) DEMURRER—continued.***Entry of demurrer for argument.*

may be made by either party immediately when a demurrer either to the whole or part of the pleading is delivered, O. 25, r. 6, p. 240.

party so entering shall on the same day give notice thereof to the other party, O. 25, r. 6, p. 240.

entry to be made by delivering memorandum to proper officer, O. 25, r. 13, p. 241.

form of memorandum provided for, O. 25, r. 13, p. 241.—The form Schedule C, form 2, p. 305.

if the demurrer shall not be entered and notice thereof given within 10 days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument, O. 25, r. 6, p. 240.

*Amendment of pleading while demurrer pending.*

pleading not to be amended while a demurrer to whole or part of pleading is pending, O. 25, r. 7, p. 240.

unless by order of Ct. or judge, O. 25, r. 7, p. 240.

no such order shall be made except on payment of costs of the demurrer, O. 25, r. 7, p. 240.

*Costs.*

party whose pleading is demurred to shall pay to the demurring party the costs of the demurrer if a demurrer to whole or part of any pleading is allowed upon argument, O. 25, r. 8, p. 240.

unless Ct. otherwise order, O. 25, r. 8, p. 240.

if there is no ground or only a frivolous ground of demurrer stated in demurrer the Ct. or judge may set aside such demurrer with costs, O. 25, r. 2, p. 239.

if demurrer shall not be entered and notice thereof given within 10 days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend the demurrer, shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument, O. 25, r. 6, p. 240.

if demurrer to whole of statement of claim be allowed pl. shall pay to demurring deft. the costs of the action, O. 25, r. 9, p. 240.

subject to power of Ct. to allow statement of claim to be amended, O. 25, r. 9, p. 240.

unless Ct. shall otherwise order, O. 25, r. 9, p. 240.

where demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, O. 25, r. 11, p. 241.

unless the Ct. shall otherwise direct, O. 25, r. 11, p. 241.

*Effect of allowed demurrer.*

if demurrer to whole of statement of claim be allowed, pl. shall pay to the demurring deft. costs of action, O. 25, r. 9, p. 240.

subject to power of Ct. to allow statement of claim, O. 25, r. 9, p. 240.

unless the Ct. shall otherwise order, O. 25, r. 9, p. 240.

where a demurrer to any pleading or part of a pleading is in any other case, the matter demurred to shall, as between the parties to the demurrer, be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded, O. 25, r. 10, p. 241.

subject to power of Ct. to allow an amendment, O. 25, r. 10, p. 241.

*Effect of overruled demurrer.*

where a demurrer is overruled the Ct. may make such order, and upon such terms as to the Ct. shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to, O. 25, r. 12, p. 241.

**PLEADING.—(7) MARRIAGE, DEATH, AND BANKRUPTCY OF PARTIES.***Abatement*

no action shall become abated by reason of (a) the marriage, (b) death, (c) or bankruptcy of any of the parties, (i) if the cause of action survive or continue, and (ii) shall not become defective by the (x) assignment, (y) creation, or (z) devolution of any estate or title pendente lite, R.F. 17, p. 70.

**PLEADING.—(7) MARRIAGE, DEATH, & BANKRUPTCY OF PARTIES—continued.**  
no plea or defence shall be pleaded in acatement, O. 18, r. 10, p. 228.

*Marriage, death, or bankruptcy &c.*

in case of the marriage, death, or bankruptcy, or devolution of the estate by operation of law of any party to an action, Ct. or judge may, if it be deemed necessary for the complete settlement of action, order that husband, personal representative trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof, R.P. 17, p. 70.

to be in such manner and form as may be prescribed by R.C., and on such terms as the Ct. or judge may think just, R.P. 17, p. 70.

Ct. or judge shall make such order for the disposal of the action as may be just, R.P. 17, p. 70.

where by reason of marriage, death or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained, O. 41, r. 1, p. 272.

order may be obtained ex parte on application to the Ct. or judge, O. 45, r. 1, p. 272.

order may be obtained upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence, O. 45, r. 1, p. 272.

order so obtained shall, unless Ct. or judge otherwise directs, be served upon the continuing party or parties to the action or their solicitors, and also upon each such new party, O. 45, r. 2, p. 272.

order from time of such service shall be binding on the persons served therewith, O. 45, r. 2, p. 272.

every person served with order, who is not already a party to the action shall be bound to enter an appearance thereto, within the same time and in the same manner as if he had been served with a writ of summons, O. 45, r. 2 p. 272.

where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the action shall be served with an order; such person may apply to the Ct. or judge to discharge or vary such order at any time within 12 days from the service thereof, O. 45, r. 3, p. 272.

when any person being under any disability other than coverture, and not having had a guardian ad litem appointed in the action is served with order, such person may apply to Ct. or judge to discharge or vary such order at any time within 12 days from the appointment of a guardian or guardians ad litem for such party, and until such period of 12 days shall have expired such order shall have no force or effect as against such last mentioned person, O. 45, r. 4, p. 237.

**PLEADING.—(8) DENIAL OF FACTS IN PLEADINGS.**

general denial by deft. in his defence of facts alleged by statement of claim, or by pl. in his reply of facts alleged in defence by way of counter claim not to be sufficient, O. 18, r. 17, p. 229.

each party must deal specifically with each allegation of fact of which he does not admit the truth, O. 18, r. 17, p. 230.

every allegation of fact in any pleading, if not denied specifically, or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted (except as against infants, lunatics and persons of unsound mind), not so found, O. 18, r. 14, p. 229.

joinder of issue to operate as a denial of every material allegation of fact in the pleading upon which issue is joined, O. 18, r. 18, p. 230.

joinder of issue may except any facts which the party may be willing to

**PLEADING.—(8) DENIAL OF FACTS IN PLEADINGS. —continued.**

admit, and shall then operate as a denial of the facts not so admitted, O. 18, r. 18, p. 230.

denial of facts in the previous pleadings must not be evasive, but to the point of substance, O. 18, r. 19, p. 230.

[e.g., if it be alleged that A received a certain sum of money, denial that he received that particular sum shall not be sufficient, but he must deny that he received that sum, or any part thereof, or else set out how much he received, O. 18, r. 19, p. 230].

Denial of a matter of fact alleged, with divers circumstances, must not be denial, as alleged, along with those circumstances, but a fair and substantial answer must be given, O. 18, r. 19, p. 230.

bare denial of a contract alleged in any pleading shall be construed as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise, O. 18, r. 20, p. 230.

neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied, O. 18, r. 25, p. 213.

[e.g. consideration for a bill of exchange where the pl. sues only on the bill, and not for the consideration as a substantive ground of claim, O. 18, r. 27, p. 231.

**PLEADING.—(9) MODE OF PLEADING SPECIAL PLEAS.****1.—Documents.**

wherever the contents of any document are material, the effect as briefly as possible to be sufficient, without setting out the whole or any part thereof, O. 18, r. 21, p. 230.

unless the precise words of the document or any part thereof are material, O. 18, r. 21, p. 230.

**2.—Malice, fraudulent intention, knowledge, &c.**

wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred, O. 18, r. 22, p. 230.

**3.—Notice.**

wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, O. 18, r. 23, p. 231. unless the form or the precise terms of such notice be material, O. 18, r. 23, p. 231.

**4.—Implied contract or relation.**

wherever any contract or any relation between any persons does not arise from any express agreement, but is to be implied from a series of letters, or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances, without setting them out in detail, O. 18, r. 24, p. 231.

if person pleading desires to rely in the alternative upon more contracts or relations than one, as to be implied from such circumstances, he may state the same in the alternative, O. 18, r. 24, p. 231.

**PLEADING.—(10) PLEADING MATTERS ARISING PENDING THE ACTION.**

after action brought, but before delivery of statement of defence, and before time limited for doing so, grounds of defence which have arisen, may be pleaded in statement of defence either alone or with other grounds of defence, O. 19, r. 1, p. 232.

after delivery of statement of defence, any ground of defence arising to any set off or counter claim alleged therein by deft., may be pleaded by pl. in reply either alone or with other grounds of reply, O. 19, r. 1, p. 232.

after delivery of statement of defence or time limited for so doing has expired, deft. may (a) within 8 days after ground of defence has arisen, and (b) by leave of Ct. or judge deliver further defence setting forth grounds of defence which have arisen, O. 19, r. 2, p. 232.

**PLEADING.—(10) PLEADING MATTER, &c.—continued.**

after delivery of statement of defence or time limited for so doing has expired, pl. may (a) within 8 days after ground of defence has arisen, and (b) by leave of Ct. or judge deliver further reply, setting forth grounds of defence to set off or counter claim which have arisen after reply, O. 19, r. 2, p. 233.

pl. may deliver confession of a defence which has arisen after commencement of action, and which deft. alleges in statement of defence a further statement of defence, O. 19, r. 3, p. 233.

form of confession provided for, O. 19, r. 3, p. 233.

the form Schedule B, form 2, p. 301.

pl. may, after delivery of confession, sign judgment for his costs up to time of pleading such defence, unless Ct. or judge shall, either before or after delivery of confession, otherwise orders, O. 19, r. 3, p. 233.

**PLEADING.—(11) THE PROBATE AND ADMIRALTY.***In Admiralty actions for damages by collision.*

a document to be called a Preliminary Act, to be filed by each solicitor before any pleading is delivered, unless Ct. or judge otherwise orders, O. 18, r. 27, p. 231.

preliminary act to be filed with proper officer, O. 18, r. 27, p. 231.

to be sealed up and not to be opened until ordered by the Ct. or judge, O. 18, r. 27, p. 231.

contents, O. 18, r. 27, pp. 231, 232.

if both solicitors consent, court or judge may order the preliminary acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings, O. 18, r. 27, p. 232.

*In probate actions.*

where plaintiff disputes interest of defendant, he shall allege in his statement of claim that he denies the defts. interest, O. 18, r. 9, p. 223.

**PLEADING.—(12) JOINDER OF ISSUE AND CLOSE OF PLEADING.**

issue upon the defence may be joined by plaintiff in his reply, and issue upon the previous pleading may be joined by each party in any pleading, subsequent to reply, O. 18, r. 18, p. 230.

joinder of issue to be subject to O. 18, r. 17, as to denial of facts being specific and not general, O. 18, r. 17, p. 230.

joinder of issue to operate as a denial of every material allegation of fact in the pleading upon which issue is joined, O. 18, r. 18, p. 230.

joinder of issue may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted, O. 18, r. 18, p. 230.

as soon as either party has joined issue upon any pleading of the opposite party, simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed, O. 23, p. 237.

**PLEADING.—(13) DEFAULT OF PLEADING.***Default by plaintiff.*

deflt. may apply to Ct. or judge to dismiss action, with costs, for want of prosecution, if pl. (being bound to deliver a statement of claim) does not deliver same within the time allowed for that purpose, O. 26, r. 1, p. 241.

application may be made at expiration of time limited for delivery of statement, O. 26, r. 1, p. 241.

on hearing of application, Ct. or judge may, if no statement has been delivered (a) order the action to be dismissed accordingly, or (b) may make such other order on such terms as to the Ct. or judge shall seem just, O. 26, r. 1, p. 241.

*Default by defendant in claim for debt or liquidated deceased.*

pl. may enter final judgment for amount claimed, with costs, if deflt. does not within time limited for that purpose deliver a defence or demurrer, O. 26, r. 2, p. 241.

judgment may be entered at expiration of time limited for defence or demurrer, O. 26, r. 2, p. 241.



**PLEADING.—(13) DEFAULT OF PLEADING.—continued.**

where there are several debts., and one makes default, pl. may enter judgment against defaulting debt., and issue execution upon such judgment without prejudice to his right to proceed with his action against the other debts., O. 26, r. 3, p. 241.

If pl.'s claim be for debt or liquidated demand, and also for detention of goods, and pecuniary damages, or pecuniary damages only, and the debt makes default, pl. may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, O. 26, r. 6, p. 242.

*Default by defendant in claim for detention of goods and pecuniary damages or either of them.*

pl. may enter an interlocutory judgment against debt. if debt. does not within the time limited for that purpose deliver a defence or demurrer, O. 26, r. 4, p. 242.

interlocutory judgment may be entered at expiration of time limited for defence or demurrer, O. 26, r. 4, p. 242.

on entry of interlocutory judgment, a writ of enquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, O. 26, r. 4, p. 242.

Ct. or judge may order that instead of writ of enquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried, O. 26, r. 4, p. 242.

where there are several debts., and one makes default, pl. may enter an interlocutory judgment against him, and proceed with his action against the others, O. 26, r. 5, p. 242.

damages against the defaulting debt. shall be assessed at the same time with the trial of the action or issues therein against the other debts., unless the Ct. or judge shall otherwise direct, O. 26, r. 5, p. 242.

If pl.'s claim be for debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the debt makes default, pl. may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, O. 26, r. 6, p. 242.

*Default by defendant in actions for recovery of land.*

pl. may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with costs if debt., does not within time limited for that purpose deliver a defence or demurrer, O. 26, r. 7, p. 242.

when the pl. has endorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, pl. may enter judgment against defaulting debt. or debts., and proceed as in case of default when claim is for pecuniary damages, see supra, O. 26, r. 8, 243.

*Default by defendant in probate actions.*

action may proceed, notwithstanding default of any debt. in filing and delivering a defence or demurrer, O. 26, r. 9, p. 243.

*Default by defendant in all other actions.*

(except those for (a) debt or liquidated demand (b) for detention of goods and pecuniary damages, or either of them (c), for recovery of land or (d) in probate actions).

pl. may set down action on motion for judgment, if debt. makes default in delivering a defence or demurrer, O. 26, r. 10, p. 243.

such judgment shall be given, as upon the statement of claim, the cl. shall consider the pl. entitled to, O. 26, r. 10, p. 243.

where there are several debts., and one makes default, pl. may (a) set down the action at once on motion for judgment against the defaulting debt., or (b) may set it down against him at the time when it is entered for trial or (c) set down on motion for judgment against the other debts., O. 26, r. 11, p. 243.

*Close of pleadings upon default of pleadings.*

pleadings shall be deemed to be closed, (a) if pl. does not deliver a reply or

**FLEADING.—DEFAULT OF PLEADING.—continued.**

demurrer, or (b) any party does not deliver any subsequent pleading or a demurrer within the period allowed for that purpose, O. 26, r. 12, p. 243.

Pleadings to be deemed to be closed at the expiration of period allowed for that purpose, O. 26, r. 12, p. 243.

statements of fact in this pleading last delivered shall be deemed to be admitted, O. 26, r. 13, p. 243.

*In case of third parties,*

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5. no proceeding to be restrained by prohibition or injunction, but equity formerly entitling party to a restraining order, to be relied on by way of defences, s. 24, p. 18.
6. legal estates to be otherwise recognized, s. 24, p. 18.
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H.M. may, by and with advice of Ld. Ch., C.J. of England, and other judges (of whom Ld. Ch. and C.J. shall be two), cause R.C. to be prepared, s. 68, p. 45.

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R.C. to be laid before Houses of Parliament within 40 days of being made, if Parliament sitting, or within 40 after next meeting, if not sitting, s. 68, p. 46.

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### **2. After commencement of Act.**

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R.C. and orders of Ct. of Probate, Divorce, Admiralty, and Bankruptcy Cts. may be altered by R.C. after 2nd November, 1874, s. 70, p. 47.

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### **3. Contemplated on the following special subjects.**

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SITTINGS	COMMENCE	TERMINATE.
Michaelmas	2nd November	21st December
Hilary	11th January	Wednesday before Easter
Easter	Tuesday after Easter week	Friday before Whit-Sunday
Trinity	Tuesday after Whitsun week	8th August

the vacations to be observed in the several courts and officers of the Supreme Ct. shall be four in every year, viz.:—The Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation, O. 55, r. 2, p. 233.  
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VACATION	COMMENCE	TERMINATE.
The Long	10th August	24th October
Christmas	24th December	6th January
Easter	Good Friday	Easter Monday
Whitsun	Saturday before Whitsunday	Tuesday after Whit-Sunday

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- unless expressed to be lunar months, O. 51, r. 1, p. 279.
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- during long vacation no pleadings shall be amended or delivered unless directed by Ct. or judge, O. 51, r. 4, p. 279.
- the time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by R.C. for filing, amending, or delivering any pleading, unless otherwise directed by Ct. or judge, O. 51, r. 5, p. 279.
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modes of, R. P. 30, p. 75.

questions of law may be raised and tried before questions of fact, R. P. 24, p. 72.

**Place of Trial.**

no local venue for trial of any action, R. P. 28, p. 74.

when pl. proposes to have action tried out of Middlesex, statement must name county or place, R. P. 28, p. 74.

action to be tried in county or place named by pl., unless a judge otherwise directs, R. P. 28, p. 74.

where no place of trial is named in statement, place of trial to be Middlesex, unless a judge otherwise orders, R. P. 28, p. 74.

orders of judge as to place of trial may be discharged or varied by D. C. of H. C., R. P. 28, p. 74.

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**Trial by Jury**

sittings for trial by jury in Middlesex and London to be held, s. 30, p. 25.

to be held continuously as far as is reasonably practicable, and subject to vacations, s. 30, p. 25.

trial of issue of fact by a jury, to be before a single judge, unless specially otherwise ordered, R. P. 33, p. 75.

of references, R. P. 34, p. 75, see Referee.

trial by jury to be before a single judge unless otherwise specially ordered to be before two or more judges, R. P. 33, p. 75.

mode of giving evidence by oral examination of witnesses in, not to be affected by Act, R. P. or R. C., s. 72, p. 47.

**Modes of Trial.**

to be (I.) before a judge or judges; (II.) before a judge sitting with assessors; (III.) before a judge and jury; (IV.) before an official referee with assessors; (V.) before an official referee without assessors; (VI.) before a special referee with assessors; and (VII.) before a special referee without assessors, R. P. 30, p. 75.

pl. may give notice of trial by any of the modes, R. P. 31, p. 75.

deft. may have issues of fact tried by judge and jury by giving proper notice, R. P. 31, p. 75.

deft. may apply to Ct. or a judge to have action tried in any other way, and Ct. shall then decide the mode, R. P. 31, p. 75.

different questions of fact in same action may be tried in different ways, and at different times and places, R. P. 32, p. 75.

**Lists for trial in London and Middlesex.**

in London and Middlesex to be prepared and action allotted for trial as prescribed by R. C., without reference to division of H. C. to which action attached, R. P. 29, p. 74.

**Notice of Trial.**

pl. may give notice of trial and thereby specify one of the modes mentioned in R. P. 30, O. 32, r. 1, p. 253.

pl. may give notice with his reply or at any time after close of pleadings, O. 32, r. 1, p. 253.

deft. may give notice of trial and thereby specify one of the modes mentioned in R. P. 30, if pl. does not within 6 weeks after the close of the pleadings, or within such extended time as a Ct. or judge may allow, O. 32, r. 2, p. 23.

deft. may give notice before notice of trial given by pl., O. 32, r. 2, p. 253.

if pl. or deft. desires to have action tried in any other mode than that specified in notice, he shall apply to Ct. or judge for order to that effect, O. 32, r. 3, p. 253.

**TRIAL**—continued.

- application to be made within 4 days from the time of the service of the notice, or within such extended time as a Ct. or judge may allow, O. 32, r. 3, p. 254.
- notice of trial to state whether it is for the trial of action or of issues therein, O. 32, r. 4, p. 254.
- in actions in Q.B., C.P., and Ex. Divs. to state the place and day for which it is entered for trial, O. 32, r. 4, p. 254.
- form of notice provided for, O. 32, r. 4, p. 254.
- the form, schedule B, form 14, p. 304.
- ten days' notice of trial to be given, O. 32, r. 5, p. 254.
- unless party to whom it is given has consented to take short notice of trial, O. 32, r. 5, p. 254.
- such notice shall be sufficient in all cases unless otherwise ordered by the Ct., O. 32, r. 5, p. 254.
- short notice shall be four days' notice, O. 32, r. 5, p. 254.
- notice to be given before entering action for trial, O. 32, r. 6, p. 254.
- notice for London or Middlesex shall not operate as for any particular sittings, O. 32, r. 7, p. 254.
- it shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list, O. 32, r. 7, p. 254.
- notice elsewhere than in London and Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given, O. 32, r. 8, p. 254.
- no notice shall be countermanded except by consent or by leave of Ct. or judge, O. 32, r. 9, p. 254.
- leave may be given subject to such terms as to costs or otherwise as may be just, O. 32, r. 9, p. 254.

**Entry for trial.**

- either party may enter the action for trial if notice of trial is given elsewhere than in London or Middlesex, O. 32, r. 11, p. 254.
- if both parties enter the action for trial it shall be tried in the order of the pl.'s entry, O. 32, r. 11, p. 254.
- if party giving notice of trial for London or Middlesex omits to enter cause for trial on the day or day after giving notice of trial, the party to whom notice has been given may enter cause for trial, O. 32, r. 10, p. 254.
- unless notice has been countermanded by consent or leave, O. 32, r. 10, p. 254.
- party entering action for trial shall deliver to the officer a copy of the whole of the pleadings in the action for the use of the judge at the trial, O. 32, r. 12, p. 255.
- such copy shall be in print, except as to such parts (if any) of the pleadings as are by R.C. permitted to be written, O. 32, r. 12, p. 255.

**Non-appearance at trial.**

- pl. may prove his claim so far as the burden of proof lies on him if when action is called on for trial the pl. appears and the deft. does not appear, O. 32, r. 13, p. 255.
- def., if he has no counter claim shall be entitled to judgment dismissing the action, if when the action is called on for trial the deft. appears and pl. does not appear, O. 32, r. 14, p. 255.
- if deft. has counter claims then he may prove such counter claim, so far as the burden of proof lies on him, O. 32, r. 14, p. 255.

**Setting aside judgment for non-appearance.**

- any verdict or judgment obtained where one party does not appear at trial, may be set aside by Ct. or judge upon such terms as may seem fit, O. 32, r. 15, p. 255.
- application for the purpose must be made within 6 days after trial, O. 32, r. 15, p. 255.
- application may be made either at the assizes or in Middlesex, O. 32, r. 15, p. 255.

**Adjournment of trial.**

- judge may postpone or adjourn trial for such time and upon such terms, if any, as he shall think fit, O. 32, r. 16, p. 255.

**TRIAL—continued**

if he thinks it expedient for the interests of justice, O. 32, r. 16, p. 255.

*Entry of judgment.*

Judge may direct judgment be entered for any or either party, as he is by law entitled to upon the findings, O. 31, r. 17, p. 255.

direction may be at or after such trial, O. 32, r. 17, p. 255.

direction may be either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment upon such terms, if any, as he shall think fit to impose, O. 32, r. 17, p. 255.

direction may be that judgment be not entered then, and Ct. may leave any party to move for judgment, O. 32, r. 17, p. 255.

no judgment shall be entered after a trial without the order of a Ct. or judge, O. 32, r. 17, p. 255.

associate shall enter (a) all findings of fact directed by judge to be entered (b) all directions of the judge as to judgment, and (c) certificates granted by the judge, O. 32, r. 18, p. 256.

entries to be made by the associate upon every trial at the assizes or at the London and Middlesex sittings of the Q.B., C.P., and Ex. Div.

where the officer present at the trial is not the officer by whom judgments ought to be entered, O. 32, r. 18, p. 256.

entries to be made in a book, to be kept for that purpose, O. 32, r. 18, p. 256.

certificate of associate that judge directed judgment to be entered for any party absolutely, shall be sufficient authority to proper officer to enter judgment accordingly, O. 32, r. 19, p. 256.

certificate of associate that judge directed judgment to be entered for any party subject to leave to move shall be sufficient authority to proper officer to enter judgment accordingly, O. 32, r. 20, p. 256.

*Mode of trial—direction by judge.*

Ct. or judge may direct a trial without a jury of any question or issue of fact, or partly of fact, and partly of law arising in any cause or matter which previously to passing of Act could, without any consent of parties be tried without a jury, O. 32, r. 21, p. 256.

direction may be made if Ct. or judge deem it advisable, O. 32, r. 21, p. 256.

Ct. or judge may direct that any issue of fact shall be tried by a judge with a jury, O. 32, r. 22, p. 256.

direction to be made if it shall appear either before or at the trial that the issue can be more conveniently tried before a jury, O. 32, r. 22, p. 256.

Ct. or judge of Div. to which action is assigned may order trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed under sec. 29, or at the sittings to be held in Middlesex or London, O. 32, r. 24, p. 256.

order may be made at any time or from time to time, O. 32, r. 24, p. 256.

Such question or issue shall be tried and determined accordingly, O. 32, r. 24, p. 256.

*Trials with assessors.*

trials with assessors shall take place in such manner and upon such terms as Ct. or judge shall direct, O. 32, r. 23, p. 256.

**TRIAL BEFORE REFEREES—See also Referees; Referee Special; Referee Official.**

requiring prolonged examination of documents or accounts or scientific investigation or local investigation, may take place before referee, s. 56, p. 41 before referees, power to direct, s. 57, p. 41.

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**TRINITY SITTINGS AND VACATIONS—See Sittings and Vacations.****TRUST ACCOUNT.**

writ of summons to be endorsed with claim that pl. requires account in ordinary cases of, R. P. 8, p. 67.

**TRUSTEE.**

Ct. may order trustee to be made party to an action in case of marriage, death, or bankruptcy of any party to an action, R.P. 17, p. 70.

may sue and be sued without joining parties beneficially interested, R.P. 14, p. 69.

right of, to costs, out of a particular estate or fund, to be same as he would have according to rules hitherto acted upon in Cts of Equity, R.P. 47, p. 80. no claim of *cestui que* trust against his for property held on express trust or in respect of breach of trust to be barred by statute of limitations, s. 25, p. 20.

**TRUSTEE RELIEF ACTS.**

where there are disputed claims payment by person liable to chose in action into H.C. under, s. 25, p. 21.

Trustee Relief Act, 1847 (10 and 11 Vict., c. 96), pp. 130-131.

Trustee Relief Act, 1849 (12 and 13 Vict., c. 74), p. 132.

**TRUSTS**

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**UNSECURED CREDITORS—See Creditors.****UNSOUND MIND.**

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**USAGE.**

Judges appointed before passing of Act not liable by, to serve on commissions of assize, &c., not to be liable, s. 11, p. 6.

**VACANCIES.**

in office of judge of H.C. to be filled up by appointment by letters patent, s. 5, p. 2.

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**VACANCY.**

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**VACATION JUDGES.**

two of the judges of the H.C. shall be selected at the commencement of each long vacation for the hearing, in London or Middlesex, during vacation, of all such applications as may require to be immediately or promptly heard, O. 55, r. 5, p. 283.

such two judges shall act as vacation judges for one year from their appointment, O. 55, r. 5, p. 283.

In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the H.C. or of any Ct. whose jurisdiction is by the said Act trans-

**VACATION JUDGES—continued**

- fered to the H.C.) who have not already served as vacation judges of any such Ct., O. 55, r. 5, p. 283.
- If there be not two such judges for the time being of the H.C. who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served, and the senior judge or judges who has or have so served once only, according to seniority of appointment, whether in the H.C. or such other Ct. as aforesaid, O. 55, r. 5, p. 284.
- the Ld. Ch. shall not be liable to serve as a vacation judge, O. 55, r. 5, p. 284.
- vacation judges may sit either separately or together as a D.C., as occasion shall require, and may hear and dispose of all actions, matters, and other business to whichever Div. the same may be assigned, O. 55, r. 6, p. 284.
- No order made by a vacation judge shall be reversed or varied except by a D.C. or C.A., or a judge of C.A., or the judge who made the order, O. 55, r. 6, p. 284.
- any other judge of the H.C. may sit in vacation for any other judge, O. 55, r. 6, p. 284.
- one of the ordinary judges of C.A. shall be selected at the commencement of the long vacation for the hearing in London or Middlesex of all such applications as may require to be immediately or promptly heard, O. 55, r. 7, p. 284.
- such judge shall act as vacation judge for one year from his appointment, O. 55, r. 7, p. 284.
- in the absence of arrangement between the judges, the judge who junior in rank, who has not already served as vacation judge of the C.A., shall be the vacation judge, and if there shall be no such judge, then the senior ordinary judge who has so served once only, according to seniority of rank, O. 55, r. 7, p. 284.
- vacation judge may discharge or vary any order made by a single vacation judge of H.C.; but every such order may be varied or discharged by the C.A. or a D.C. thereof, O. 55, r. 7, p. 284.
- any other judge of C.A. may sit in vacation for the vacation judge, O. 55, r. 7, p. 284.
- the vacation judges of H.C. or C.A. respectively, may dispose of all actions, matters, and other business of an urgent nature during the interval between the sittings of any Div. of H.C. to which such business may be assigned, or of the C.A., as the case may be, although such interval may not be called or known as a vacation, O. 55, r. 9, p. 284.

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- of annuities, and future and contingent liabilities in insolvent estates, rules as to, to be same as in bankruptcy, s. 25, p. 20

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- in H.C. of jurisdiction of various Cts., s. 16, p. 9
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- interrogatories, costs of, to be borne by party in fault, R.P. 25, p. 73, see Costs; Interrogatories.

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- the several, to be first judges of H.C., s. 5, p. 2
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- shall be the rule at trials of any cause or assessment of damages unless otherwise arranged, R.P. 36, p. 76



**VOID.**

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**WARDSHIP.**

of infants, causes as to, assigned to C. Div., s. 34, p. 30

**WASTE**

estate for life without impeachment of, not to confer legal right to commit equitable, unless intention expressly appear, s. 25, p. 20

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**WOMEN—See Married Women.****WORDS.**

used in Act to have certain interpretation, unless anything repugnant in context, s. 100, p. 62.

**WRIT OF ATTACHMENT.—See attachment.****WRIT OF DISTINGAS.—See Distringas.****WRIT OF DELIVERY.**

a writ for the delivery of any property, other than land or money, may be issued or enforced in the manner heretofore in use in actions of detinue in the Superior Cts. of C.L., O. 44, r. 271.

**WRIT OF ELEGIT.**

to have same force and effect as the like writ has heretofore had, O. 38, r. 1, p. 267.

to be executed in the same manner in which the like writs have heretofore been executed, O. 38, r. 1, p. 267.

**WRIT OF ERROR.**

pending at commencement of Act may be prosecuted to House of Lords, H.M. in Council, or Judicial Committee, s. 20, p. 12

**WRIT OF EXECUTION.—See Execution Writ of.****WRIT OF Fieri Facias.**

to have same force and effect as the like writ has before had, O. 38, r. 1, p. 267.

to be executed in the same manner in which the like writ has heretofore been executed, O. 38, r. 1, p. 267.

**WRITS IN AID OF FI. FA. OR ELEGIT.**

writs of *venuditioni exponas*, *distringas nuper vice comitem fieri facias*, *de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *fieri facias* or of *Elegit* may be issued and executed in the same cases, and in the same manner as heretofore, O. 38, r. 2 p. 277.

**WRIT OF POSSESSION.**

a judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Cts. of Common Law, O. 43, r. 1, p. 271.

Writ of possession may be issued by person prosecuting judgment, O. 43, r. 2, p. 271.

Writ may be sued out without any order for that purpose, O. 43, r. 2, p. 271.

Writ may be sued out on filing an affidavit showing (a) due service of judgment and (b) that judgment has not been obeyed, O. 43, r. 2, p. 271.

**WRIT OF SEQUESTRATION.**

writ of sequestration may issue (a) where any person is by any judgment directed to pay money into Ct., or (b) to do any other act in a limited time, and after due service of such judgment, refuses or neglects to obey the same according to the exigency thereof, O. 42, p. 271.

the person prosecuting judgment shall, at the time limited for the performance thereof be entitled to issue writ, O. 42, p. 271.

**WRIT OF EXECUTION**—continued.

writ to issue without any order for that purpose, O. 42, p. 271.

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writ to have same effect as a writ of sequestration in Chancery has heretofore had, O. 42, p. 271.

proceeds of sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Ct. Ch., O. 42, p. 271.

**WRIT OF SUMMONS**.—The references on this subject are thus sub-divided:—

(1.) Form of writ; (2.) Date and teste of writ; (3.) Endorsements of claim on writ; (4.) Special endorsements of writ; (5.) Endorsement of address on writ; (6.) Issuing of writs; (7.) Endorsement of character of parties; (8.) Concurrent writs; (9.) Disclosure by solicitors and plaintiffs; (10.) Renewal of writs; (11.) Duration of writs; (12.) Service in the jurisdiction; (13.) Service out of jurisdiction.

**WRIT OF SUMMONS**.—(1.) **FORM OF WRIT**.

forms of writ of summons applicable to several ordinary causes of action to be prescribed by R.C., R.P. 3, p. 66.

costs incurred by use of any more prolix or other forms than those prescribed by R.C., to be borne by party using same, unless Ct. shall otherwise direct, R.P. 3, p. 66.

general form provided for, O. 1, r. 1, p. 202.—The form Schedule A, pt. 1, form 1, p. 287.

form for service out of jurisdiction provided for, O. 1, r. 3, p. 202.—The form Schedule A, pt. 1, form 2, p. 287.

form where notice in lieu of service out of the jurisdiction is to be given, provided for, O. 1, r. 3, p. 202.—The form Schedule A, pt. 1, form 3, p. 288.

form in an action upon a bill of exchange or promissory note commenced within six months after same shall have become due, to remain unaltered O. 1, r. 4, p. 202.

procedure in Interpleader to be as provided under Interpleader Acts O. 1, r. 5, p. 203.

form in Admiralty action in rem provided for, O. 1, r. 6, p. 203.—The form Schedule A, pt. 1, form 4, p. 289.

**WRIT OF SUMMONS**.—(2.) **DATE AND TESTE OF WRIT**.

every writ of summons and also every other writ to bear date on the day on which the same shall be issued, O. 1, r. 7, p. 203.

every writ of summons to be tested in the name of the Ld. Ch., or if office of Ld. Ch. be vacant in name of C. J. of England O. 1, r. 7, p. 203.

**WRIT OF SUMMONS**.—(3.) **ENDORSEMENTS OF CLAIM ON WRIT**.—See also Special Endorsements *infra*.*In all cases.*

every writ of summons shall be endorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, R.P. 2, p. 65.

endorsement of claim shall be made on a writ of summons before it is issued, O. 2, r. 1, p. 203.

not to be essential to set forth therein—

1. the precise ground of complaint.

2. the precise remedy or relief to which the pl. considers himself entitled, O. 2, r. 2, p. 203.

pl. may by leave of Ct. or Judge amend endorsement so as to extend it to—

1. any other cause of action.

2. any additional remedy or relief, O. 2, r. 2, p. 203.

*In particular cases.*

1. where pl. sues, or any of the defts. is sued in a representative capacity, endorsement to show in what capacity he sues, O. 2, r. 4, p. 204.—For forms Schedule A, pt. 2, sec. 8, p. 300.

2. in probate actions the endorsement to show whether pl. claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, or otherwise.—O. 2, r. 5, p. 204.

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- (b) amount claimed for debt and costs re
- (c) that upon payment of debt and costs  
(or in case of writ not for service  
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WRIT OF SUMMONS.—(4.) SPECIAL ENDORSEMENTS OF WRIT.—For endorsements in ordinary cases, see *infra*.

## (I.) DEBTS AND LIQUIDATED DEMANDS.

writ of summons may be specially endorsed with particulars of the amount sought to be recovered after giving credit for any payment or set-off where pl. seeks to recover (1) debt; (2) liquidated demand in money payable by deft., with or without interest, arising upon a contract, express or implied, as for instance:— (R.P. 7, p. 66.)

- (a) bill of exchange.—For form see Schedule A, sec. 7, form 4, p. 299
- (b) promissory note.—For form see Schedule A, sec. 7, form 5, p. 299
- (c) cheque.
- (d) other simple contract debt.—For form see Schedule A, sec. 7, form 1, p. 299
- (e) bond.—For form see Schedule A, sec. 7, form 5, p. 299
- (f) contract under seal for payment of a liquidated amount of money.—For form see Schedule A, sec. 7, form 6, p. 299
- (g) statute where sum sought to be recovered is a fixed sum of money or in the nature of a debt.
- (h) guaranty, whether under seal or not, where claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note.—For form see Schedule A, sec. 7, form 2, p. 299
- (i) on a trust.

*In case of non appearance of defendant.*

pl. may sign final judgment for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified, if any, to the date of judgment, and a sum for costs, R.P. 7, p. 67.

Ct. or judge may set aside or vary such judgment upon such terms as may seem just, R.P. 7, p. 67.

*In case of appearance of defendant.*

pl. may on affidavit (I.) verifying cause of action; (II.) swearing that in his belief there is no defence to the action, call on deft. to show cause before Ct. or judge why pl. should not be at liberty to sign final judgment for amount endorsed, together with interest if any, and costs, R.P. 7, p. 67.

deft. may defend action if by affidavit or otherwise (I.) he satisfy Ct. or judge that he has a good defence to the action on the merits; (II.) or discloses such facts as the Ct. or judge may think sufficient to entitle him to defend, R.P. 7, p. 67.

pl. may be empowered, by order, to sign judgment if deft. fail to satisfy Ct. or judge of his defence, R.P. 7, p. 67.

*Application to enter final judgment and leave to defend.*

shall be made by summons returnable not less than two clear days after service, O. 13, r. 1, p. 221

deft. may show cause against application (I.) by offering to bring into Ct. the sum endorsed on the writ, or (II.) by affidavit, O. 13, r. 2, p. 221.

affidavit to state whether defence he alleges goes to whole or to part only, and if so, to what part of pl's claim, O. 13, r. 2, p. 221.

judge may order deft. (a) to attend and be examined on oath (b) or

WRIT OF SUMMONS—(4) SPECIAL ENDORSEMENTS OF WRIT—continued  
to produce any books or documents, or copies of or extracts therefrom,  
O. 13, r. 2, p. 221.

pl. may have judgment forthwith for undefended part if (a) defence applies  
only to part of pl.'s claim, or (b) part of his claim is admitted to be due,  
any deft. may be allowed to defend as to residue, O. 13, r. 3, p. 221.

such judgment may be subject to terms as to (a) suspending execution,  
or (b) payment of amount levied or any part thereof into Ct. by sheriff  
(c) taxation of costs, or (d) otherwise as judge may think fit, O. 13,  
r. 3, p. 221.

pl. may enter final judgment and issue execution against deft. without  
defence if it appears to judge that one deft. has defence, but that  
another deft. has no defence, without prejudice to pl.'s right to proceed  
against deft. defending, O. 13, r. 4, p. 222.

leave to defend may be given (a) unconditionally, or (b) subject to such  
terms as to giving security, or (c) otherwise as Ct. or judge may think fit,  
O. 1, r. 5, p. 222.

(II.) IN CASES OF ACCOUNT.

writ of summons shall be endorsed with a claim for accounts in all cases  
of ordinary account, as for instance in the cases of :—

(a) partnership accounts.

(b) executory accounts.

(c) ordinary trust accounts.

where the pl. in the first instance desires to have an account taken, R.P.  
8, p. 67.

*In default of appearance of defendant.*

an order for the account claimed, with all directions usual in Ct. Ch. in  
similar cases shall be forthwith made, R.P. 8, p. 68.

*In cases of appearance of defendant.*

def. may, by affidavit, satisfy Ct. or judge that there is some pre-  
liminary question to be tried, R.P. 8, p. 68.

def. failing to satisfy Ct., order for account claimed, with all directions  
usual in Ct. Ch. in similar cases, shall be forthwith made, R.P. 8, p. 68.

*The application.*

to be made by summons and be supported by an affidavit filed on behalf  
of the pl. stating concisely the grounds of his claim to an account,  
O. 14, p. 222.

May be made at any time after the time for entering an appearance has  
expired, O. 14, p. 222.

WRIT OF SUMMONS.—(5.) ENDORSEMENT OF ADDRESS ON WRIT AND NOTICE  
IN LIEU OF SERVICE OF WRIT.

(I.) *When writ is issued out of London office or out of district registry where  
defendant has option of entering an appearance in district registry  
or London office (see O. 4, r. 2, p. 205).*

1. if pl. sues by solicitor.

(a) in proper business, address of pl., name of solicitor, or firm of  
solicitors, and place of business, O. 3, r. 1, p. 204.

if place of business more than three miles from Temple  
Bar, another place to be called his address for service,  
within that distance, to be endorsed where proceedings  
may be left, O. 3, r. 1, p. 204.

(b) in agency business, in addition to address of pl. and name of  
agent or firm of agents, and place of business, the name or firm  
and place of business of the principal solicitor, O. 3, r. 1,  
p. 205.

2. if pl. sues in person.

name of pl., place of residence and occupation, and also of place  
within three miles of Temple Bar, if his residence is not within  
that distance, O. 3, r. 2, p. 205.

(II.) *In other cases where writ is issued out of district registry (see O. 4, r. 3,  
p. 206).*

1. if pl. sues by solicitor, address of pl., name of solicitor or firm of

**WRIT OF SUMMONS—(5) ENDORSEMENT OF ADDRESS, &c—continued**  
solicitors, and his other place of business within the district, O. 3, r. 3, p. 205.

2. if pl. sues in person, his place of residence and occupation, and if his place of residence be not within the district, an address for service within the district, O. 3, r. 3, p. 205.

**WRIT OF SUMMONS.—(6.) ISSUING OF WRITS.**

writs to be prepared by pl. or his solicitor, O. 4, r. 5, p. 206.

writs to be written or printed or partly written and partly printed on paper of the same description as directed in case of proceedings directed to be printed, O. 4, r. 5, p. 206.

proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper 19lbs. per mill ream or thereabouts, O. 50, r. 2, p. 277.

writs to be sealed by the proper officer, and thereupon to be deemed to be issued, O. 4, r. 6, p. 206.

*Place of Issue.*

writ may issue out of registry of any district wherever pl. may reside (except in probate actions), O. 4, r. 1, p. 205.

if deft. neither resides nor carries on business within district of issuing registry deft. may appear either (I.) in the issuing registry or (II.) in London office and writ must have on its face statement to that effect, O. 4, r. 2, p. 206.

if deft. resides or carries on business within district of issuing registry, deft. must appear in such registry, and writ must have on its face, statement to that effect, O. 4, r. 3, p. 206.

*Choice of Division, &c.*

cause or matter may be commenced in any Div. of H. C. (except in actions hitherto within the non-exclusive cognizance of H.C. of admiralty) O. 4, r. 4, p. 206.

cause to be so assigned by (I.) marking document by which same is commenced with name of Division, and (II.) giving notice thereof to proper officer, O. 4, r. 4, p. 206.

if marked for C. Div., cause to be assigned to one of Judges of Div. by marking same with name of Judge chosen by pl., O. 4, r. 4, p. 206. assignments to particular Div. or particular Judge to be subject to power of transfer, O. 4, r. 4, p. 206.

**WRIT OF SUMMONS.—(7.) ENDORSEMENT OF CHARACTER OF PARTIES.**

if pl. sues or deft. or any of defts. is sued in a representative capacity, the endorsement shall show in what capacity pl. or deft. sues or is sued, O. 2, r. 4, p. 204.

form of endorsement provided for, O. 2, r. 4, p. 204.—The Forms Schedule A, pt. 2, sec. 8, p. 300.

in probate actions the endorsement shall show in what capacity pl. claims, O. 2, r. 5, p. 204.

*Copy of Writ.*

to be left with proper officer on presenting any writ of summons for sealing, O. 4, r. 7, p. 207.

to be written or printed on paper of same description as directed, in case of proceedings directed to be printed, G. 4, r. 7, p. 207.

to be signed—

1. by or for the solicitor leaving the same, or

2. by the pl. himself if he sues in person, O. 4, r. 7, p. 207.

to be filed by officer receiving same, O. 4, r. 8, p. 207.

entry of filing to be made in a book to be called the Cause Book kept in the manner in which Cause Books have hitherto been kept by the Clerks of Records and Writs in Ct. Ch., O. 4, r. 8, p. 207.

action to be distinguished by the date of the year, a letter and a number in the manner in which causes are now distinguished in Cause Books kept by Clerks of Records and Writs in Ct. Ch., O. 4, r. 8, p. 207.

*Proceedings to be filed in the Registry in particular cases previous to issue of writ:—*

1. in probate actions,

**WRIT OF SUMMONS—(7) ENDORSEMENT OF CHARACTER, &c—continued**  
affidavit made by pl. or one of the pls. in verification of the endorsement of writ, O. 4, r. 10, p. 207.

**2. in admiralty actions in rem.**

affidavit by pl. or his agent setting forth—

(a) name and description of the party on whose behalf the action is instituted.

(b) nature of the claim.

(c) name and nature of the property to be arrested.

(d) that the claim has not been satisfied, O. 4, r. 11 a, p. 207.

Ct. or judge however, may, in any case if he think fit, allow writ of summons to issue, although affidavit may not contain all the required particulars, O. 4, r. 11 c, p. 208.

**in action of wages against British ship (in addition to above a, b, c, and d.)**

(e) the national character of the vessel proceeded against, O. 4, r. 11 b, p. 207.

**in action of wages against Foreign ship (in addition to above a, b, c, d, and e.)**

(f) affidavit shall state that notice of the institution of the action has been given to the Consul of the State to which the vessel belongs if there be one resident in London, O. 4, r. 11 b, p. 208.

(g) copy of notice to be annexed to the affidavit, O. 4, r. 11 b, p. 208.

Ct. or judge however, may, waive the service of the notice, O. 4, r. 11 c, p. 208.

**in action of bottomry (in addition to above a, b, c, and d.)**

(e) the bottomry bond, and if in a foreign language a notarial translation thereof, to be produced for the inspection and perusal of the Registrar, O. 4, r. 11 c, p. 208.

(f) copy of the bond or of the translation thereof, certified to be correct, to be annexed to the affidavit, O. 4, r. 11 c, p. 208.

Ct. or judge may, however, waive production of bond, O. 4, r. 11 c, p. 208.

**in action of distribution of salvage (in addition to above a, b, c, and d.)**

(e) affidavit to state amount of salvage money awarded or agreed to be accepted, O. 4, r. 11 d, p. 208.

(f) affidavit to state name, address, and description of the party holding salvage money, O. 4, r. 11 d, p. 208.

**Second or subsequent action against property when under arrest in admiralty.**

solicitor in second action may take out summons in rem (subject to rules applicable to first summonses), O. 4, r. 12, p. 208.

solicitor in second action may cause a caveat against the release of the property to be entered in the Caveat Release Book, O. 4, r. 12, p. 208.

**WRIT OF SUMMONS.—(8.) CONCURRENT WRITS.**

one or more may be issued at instance of pl.

1. At the time of issue of original writ of summons, O. 5, r. 1, p. 208.

2. at any time during twelve months after issue of original writ, O. 5, r. 1, p. 208.

to bear teste of the same day as original writ, O. 5, r. 1, p. 208.

to be marked (I.) with a seal bearing word 'Concurrent'; (II.) the date of issuing the concurrent writ, O. 5, r. 1, p. 208.

seal to be impressed upon the writ by proper officer, O. 5, r. 1, p. 208.

to be in force only for the period during which the original writ in such action shall be in force, O. 5, r. 1, p. 208.

writ for service within jurisdiction may be issued and marked as a concurrent writ with one for service (or whereof notice in lieu of service is to be given), out of the jurisdiction, O. 5, r. 2, p. 209.

writ for service (or whereof notice in lieu of service is to be given), out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction, O. 5, r. 2, p. 209.

**WRIT OF SUMMONS.—(9.) DISCLOSURE BY SOLICITORS AND PLAINTIFFS.**

*Generally.*

on demand in writing by, or on behalf of deft. who has (I.) been served with writ, or (II.) has appeared to writ:—

every solicitor, whose name shall be endorsed on writ, shall declare

**WRIT OF SUMMONS.—(9) DISCLOSURE BY SOLICITORS, &c—continued**  
 forthwith whether such writ has been issued by him, or with his authority or privy, O. 6, r. 1, p. 209.

Proceedings to be stayed if without his authority, and no further proceeding taken without leave of Ct. or Judge, O. 6, r. 1, p. 209.

*When writ issued by partners in name of firm.*

on demand in writing by or on behalf of any deft., pls. shall declare forthwith:—

1. names of all persons constituting firm.

2. places of residence of all persons constituting firm, O. 6, r. 2, p. 209.

pls. failing to comply with demand all proceedings in action shall, on application for that purpose, be stayed upon terms, O. 6, r. 2, p. 209.

when names of partners are so declared, action to proceed in same manner, and same consequences to follow as if they had been named in the writ, O. 6, r. 2, p. 210.

all proceedings, however, to be continued in name of firm, O. 6, r. 2, p. 210.

**WRIT OF SUMMONS.—(10.) RENEWAL OF WRIT.**

no original writ to be in force for more than twelve months from day of the date thereof, including the day of such date, O. 7, r. 1, p. 210.

application to judge or registrar to renew writ may be made by pl. before expiration of twelve months, if deft. has not been served, O. 7, r. 1, p. 210.

judge or registrar if satisfied that reasonable efforts have been made to serve deft., may order that original or concurrent writ be renewed for six months from date of such renewal, and so from time to time during the currency of the renewed writ, O. 7, r. 1, p. 210.

writ to be renewed, by being marked with a seal bearing date of day, month and year of such renewal, O. 7, r. 1, p. 210.

seal to be provided and kept for that purpose at the proper offices of the Cts., O. 7, r. 1, p. 210.

seal to be impressed upon the writ by the proper officer upon delivery to him by the pl. or his solicitor of a memorandum, O. 7, r. 1, p. 210.

form of memorandum provided for, O. 7, r. 1, p. 210.—The form Schedule A, pt. 1, form 5, p.

renewed writ of summons to remain in force and be available to prevent the operation of any statute whereby the time for the commencement of an action may be limited, and for all other purposes from the date of the issuing of the original writ of summons, O. 7, r. 1, p. 210.

production of writ purporting to be marked with seal of Ct., showing the same to have been duly renewed, to be sufficient evidence of its having been so renewed, and of the commencement of the action as if the first date of such renewed writ for all purposes, O. 7, r. 2, p. 210.

**WRIT OF SUMMONS.—(11.) DURATION OF WRIT.**

if original, no writ to be in force for more than twelve months from the day of the date thereof, including the day of such date, O. 7, r. 1, p. 210.

if concurrent, for the period during which the original writ in such action shall be in force, O. 5, r. 1, p. 209.

if renewed for six months from date of such renewal, O. 7, r. 1, p. 210.

See Writ of Summons; Renewal of Writ.

**WRIT OF SUMMONS.—(12.) SERVICE IN THE JURISDICTION.**

*Acceptance of service.*

no service of writ shall be required when deft. by his solicitor (I.) agrees to accept service, and (II.) enters an appearance, R.P. 4, p. 66.

*Personal service.*

when service is required the writ shall, whenever it is practicable, be served in the manner in which personal service is now made, R.P. 5, p. 66.

*Endorsement of service on writ.*

persons serving writ within three days at most after such service, to endorse on the writ the day of the month and week of the service thereof, O. 8, r. 11, p. 212.

in default of endorsement, pl. not to be at liberty, in case of non-appearance, to proceed by default, O. 8, r. 11, p. 212.



**WRIT OF SUMMONS.—(12.) Service in the jurisdiction.—continued.*****Affidavit of service.***

to mention the day on which endorsement of service was made on writ, O. 8, r. 11, p. 213.

***Service of notice in lieu of service.***

to be in same manner in which writs are served, O. 10, r. 5, p. 214.

***Substituted service.***

if it be made to appear to Ct. or judge that the pl. is from any cause unable to effect prompt personal service, Ct. or judge may make such order for substituted or other service, or for the substitution of notice for service as may seem just, R.P. 5, p. 66.

every application to be supported by an affidavit setting forth the grounds on which the application is made, O. 9, p. 213.

***On husband and wife.***

service on husband to be deemed good service on wife when husband and wife are both defts., O. 8, r. 1, p. 211.

Ct. may order wife to be served (I.) with or (II) without dispensing with service on husband, O. 8, r. 1, p. 211.

***On infant.***

service on (I.) father (II.), guardian or if none on (III.) person with whom infant resides or (IV) under whose care it is to be deemed good service on infant, O. 8, r. 2, p. 211.

Ct. may otherwise order, O. 8, r. 2, p. 211.

Ct. may order service made or to be made on infant to be deemed good service, O. 8, r. 2, p. 211.

***On lunatics not so found.***

service on committee of lunatic or on person with whom person of unsound mind (a) resides or (b) under whose care he or she is, shall be deemed good service on lunatic or person of unsound mind, O. 8, r. 3, p. 211.

Ct. may otherwise order, O. 8, r. 3, p. 211.

***On partners sued in name of firm.***

writ to be served either (I.) upon one or more of partners or (II.) at principal place of business within the jurisdiction of the partnership, upon any person having at the time of service, the control or management of the partnership business there, O. 8, r. 4, p. 211.

such service to be a good service on the firm, subject to R.C., O. 8, r. 4, p. 211.

***On corporations, societies, &c.***

whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process, upon any corporation or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ may be served in the manner so provided, O. 8, r. 5, p. 211.

***In action to recover land.***

in case of vacant possession, service may be made when it cannot otherwise be effected by posting a copy of the writ upon the door of the dwelling house or other conspicuous part of property, O. 8, r. 6, p. 212.

***In admiralty actions in rem.***

writ to be served by the Marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the Ct., O. 8, r. 7, p. 212.

solicitor issuing the writ shall, within six days of the service thereof, file the same in the registry, O. 8, r. 7, p. 212.

service of writ against ship freight or cargo on board to be effected by Marshal or his officer, nailing or affixing the original writ for a short time on the main mast or on the single mast of the vessel, and on taking off the process, leaving a true copy of it nailed or fixed in its place, O. 8, r. 8, p. 212.

if cargo has been landed or transhipped, service of writ to arrest cargo and freight to be effected by placing writ for a short time on cargo, and on taking off the process by leaving a true copy upon it, O. 8, r. 8, p. 212.

if cargo be in custody of person who will not permit access to it, service of writ may be made upon custodian, O. 8, r. 10, p. 212.

**WRIT OF SUMMONS.—(13) SERVICE OUT OF JURISDICTION.***Generally.*

No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction shall be issued without leave of Ct. or Judge, O. 1, r. 2, p. 202.

Ct. or Judge may allow service, or notice in lieu of service, on any person out of the jurisdiction of the Ct., to be made or given in such manner and on such terms as may seem just :—

1. whenever it appears fit to the Ct. or to a judge.

2. In a case in which the cause of action has arisen within the jurisdiction.

2a. or is properly cognizable against a deft. within the jurisdiction of the Ct., R.P. 6, p. 66.

service out of jurisdiction of a writ or notice may be allowed by Ct. or Judge.

1. whenever the whole or any part of the subject matter of the action is (a) land or stock or other property situate within the jurisdiction or (b) any act deed will or thing affecting such land stock or property, O. 10, r. 1, p. 213; and

2. whenever (a) the contract sought to be enforced or rescinded dissolved annulled, or otherwise affected in any such action or (b) for the breach whereof damages or other relief are or is demanded in such action was made or entered into within the jurisdiction, O. 10, r. 1, p. 213; and

3. whenever there has been a breach within the jurisdiction of any contract whenever made, O. 10, r. 1, p. 213; and

5. Whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered was or is to be done or is situate within the jurisdiction, O. 10, r. 1, p. 213.

application for order for leave to serve writ or notice on deft., to be supported by evidence (by affidavit or otherwise), showing

1. in what place or country such deft. is, or probably may be found.

2. whether deft. is a British subject or not.

3. the grounds upon which the application is made., O. 10, r. 3, p. 213.

order to limit a time after such service or notice within which deft. is to enter an appearance, such time to depend on the place or country where or within which writ is to be served or notice given, O. 10, r. 4, p. 214.

notice in lieu of service shall be given in manner in which writs are served, O. 10, r. 5, p. 214.

*In probate actions.*

service of writ or notice may be allowed out of jurisdiction by leave of Ct. or Judge, O. 10, r. 2, p. 213.

**WRITING.**

all notices required by R.C. to be in writing, unless expressly ordered by Ct. or judge to be given orally, O. 50, r. 1, p. 277

**WRITINGS.**

jurisdiction as to issue of, under great seal, not transferred to H.C., s. 17, p. 10.

**YEARS.**

thirteen years' service by judge of H.C. or ordinary judge of C.A., to entitle to pension, s. 14, p. 8.



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